

## **HOME PREDEVELOPMENT LOAN AGREEMENT**

### **(3753 MYERS STREET)**

**THIS HOME PREDEVELOPMENT LOAN AGREEMENT (3753 MYERS STREET)** (this “**Agreement**”), dated for identification purposes only as of \_\_\_\_\_, 2015, is entered into by and between the **CITY OF RIVERSIDE**, a California municipal corporation (“**City**”), and **HABITAT FOR HUMANITY RIVERSIDE, INC.**, a California nonprofit public benefit corporation (“**Developer**”).

### **RECITALS**

The following Recitals are a substantive part of this Agreement. Capitalized terms used in these Recitals and not otherwise defined shall have the meaning set forth in Section 1.

**A.** The City of Riverside (the “**City**”) has received Home Investment Partnership Act funds from the United States Department of Housing and Urban Development (“**HUD**”) pursuant to the Cranston-Gonzales National Housing Act of 1990 (the “**HOME Funds**”). The HOME Funds must be used in accordance with 24 CFR 92 *et seq.* (HOME Regulations”) in order to increase housing for low and very low-income households and may be used to provide project-specific assistance to Community Housing Development Organizations (“**CHDO**”) by the way of project-specific technical assistance and site control loans (HOME Regulations, Section 92.301, paragraph (a)).

**B.** The Housing Authority of the City of Riverside (the “**Authority**”) is a public agency established by action of the City Council of the City of Riverside pursuant to Resolution No. 21275 for the purpose of providing affordable housing opportunities through a variety of programs within the City of Riverside.

**C.** The Authority is the owner of certain real property located at 3753 Myers Street within the City of Riverside, California and further identified as Assessor Parcel Nos. (APN) 234-101-051 consisting of 0.80 acre (the “**Site**”). A map of the Site (“**Site Map**”) is attached hereto as Attachment No. 1.

**D.** The Developer is a California nonprofit public benefit corporation whose purpose is to acquire property and develop residential properties, and who is an experienced affordable housing developer certified by the City as a Community Housing Development Organization.

**E.** Concurrent with this Agreement, the Authority and Developer have entered into that certain Disposition and Development Agreement (3753 Myers Street) dated for identification purposes as of \_\_\_\_\_, 2015 (the “**DDA**”) which provides for the Authority’s disposition of the Site to the Developer for construction of eleven single family housing units (the “**Affordable Units**”) restricted to occupancy by Low Income Households at an affordable housing costs consistent with the affordability requirements of the various funding sources (the “**Development**”).

**F.** Developer requires financial assistance from the City in order to cover Eligible Predevelopment Costs (defined below) that Developer will incur in connection with carrying out certain predevelopment activities related to the Development.

**G.** By this Agreement, and subject to the terms and conditions herein, the City desires to provide financial assistance to Developer for Eligible Predevelopment Costs in the form of a Predevelopment Loan (defined below) in the aggregate amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000), which the City has determined is necessary for customary and reasonable project preparation costs allowable under the HOME Regulations (as defined below), Section 92.301, paragraph (a)(2).

**H.** The Developer and City agree that the Predevelopment Loan is for the purpose of providing technical assistance and site control to a CHDO in the early stages of site development for an eligible project and which is in the vital and best interest of the City, is necessary for the protection of the health, safety and welfare of the community's residents, and is in accord with the public purposes and provisions of applicable federal, state and local laws and requirements. This Agreement further implements the City's goals and objectives to revitalize this area and to increase the community's supply of decent, safe and affordable housing opportunities in the City of Riverside to people of all economic segments of the population, including low income families.

**NOW, THEREFORE**, the City and the Developer hereby agree as follows:

## **1. DEFINITIONS**

### **1.1. Definitions**

***"Affordable Units"*** is defined in Recital E above.

***"Agreement"*** means this Predevelopment Loan Agreement between the City and the Developer, including (i) the Recitals set forth herein, which are incorporated herein by this reference; (ii) all attachments hereto, which are incorporated herein by this reference; (iii) all agreements entered into in the form of an attachment hereto, which are incorporated herein by this reference; (iv) all agreements required by the City to be delivered by Developer in connection herewith, which are incorporated herein by this reference; and (v) any amendments and modifications to any of the foregoing.

***"Assignment"*** means an Assignment of Plans, Reports and Data executed by Developer in favor of the City and substantially in the form of Attachment No. 8.

***"CHDO"*** is defined in Recital A above.

***"City"*** means the City of Riverside, a California municipal corporation.

***"City Manager"*** means the City Manager of the City or designee.

***"Claims"*** is defined in Section 4.7.

***"DDA"*** is defined in Recital E above.

***"Declaration (HOME)"*** mean the Declaration of Conditions, Covenants and Restrictions (With Affordable Housing Covenants Under HOME Program) attached hereto as Attachment No. 7.

***“Deed of Trust (HOME)”*** means the Deed of Trust, Fixture Filing and Assignment of Rents attached hereto as Attachment No. 6.

***“Default”*** is defined in Section 6.2.

***“Developer”*** means Habitat for Humanity Riverside, Inc., a California nonprofit public benefit corporation, and any permitted successors and assigns as permitted pursuant to this Agreement. Developer’s DUNS Number is 123200250.

***“Development”*** is defined in Recital E above.

***“Development Proposal”*** means the Development Proposal setting forth the conceptual development and financing of the Development attached hereto as Attachment No. 2.

***“Effective Date”*** is defined in Section 7.14.

***“Eligible Predevelopment Costs”*** means predevelopment costs in connection with the Development which are actually incurred by the Developer and are allowable costs for which HOME monies may be used according to the HOME Regulations, Section 92.301, paragraph (a) (project-specific technical assistance and site control loans), which provides, in pertinent part:

“project costs necessary to determine project feasibility (including costs of an initial feasibility study), consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, option to acquire property, site control and title clearance. General operational expenses of the community housing development organization are not allowable costs.”

***“Environmental Laws”*** means any and all present and future federal, state and local laws (whether under common law, statute, ordinance, rule, regulation or otherwise), court or administrative orders or decrees, requirements of permits issued with respect thereto, and other requirements of governmental authorities relating to any Hazardous Substances or any actual, proposed or threatened storage, holding, existence or suspected existence, release or suspected release, emission, discharge, generation, processing, abatement, removal, disposition, treatment, handling or transportation of any Hazardous Substances from, under, into, on, above, around or across the Site or surrounding property or any other use of or operation on the Site that creates a risk of Hazardous Substances contamination of the Site (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*), as heretofore or hereafter amended from time to time (“CERCLA”), and the applicable provisions of the California Health and Safety Code and the California Water Code, and any and all successor statutes and regulations, orders, decrees, guidelines, or pronouncements promulgated thereunder).

***“Governmental Regulations”*** means any local, state, and federal laws, ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, Environmental Laws, and laws relating to land use, subdivision, zoning, environmental, labor relations, prevailing wage, notification of sale to employees, Hazardous Substances, occupational health and safety, water, earthquake hazard reduction and building and

fire codes) bearing on the demolition, alteration, replacement, repair, refurbishing, improvement, construction, maintenance, management, use, or operation of the Development.

***“Hazardous Substances”*** means (i) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101), as amended from time to time, or now or hereafter otherwise classified or regulated pursuant to any Environmental Laws as a “hazardous substances”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, “infectious waste”, “toxic substances”, “toxic pollutant” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or “EP toxicity”, (ii) any asbestos or asbestos containing material, (iii) any polychlorinated biphenyls (PCB’s), (iv) any ureaformaldehyde, and (v) any petroleum, natural gas, natural gas liquid, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources. “Hazardous Substances” excludes substances commonly used and stored for building purposes, normal maintenance and gardening, and normal household uses by the tenants of the Development.

***“HOME Funds”*** is defined in Recital A above.

***“HOME Program”*** shall mean the HOME Investment Partnerships Act, 42 U.S.C. Sections 12701 *et seq.* and the implementing HOME Regulations as such now exist and as may hereafter be amended.

***“HOME Regulations”*** is defined in Recital A above.

***“Household”*** means one or more persons occupying an Affordable Unit.

***“Indemnified Party”*** means the City, their respective boards, officers, employees, representatives and agents.

***“Low Income Household”*** means a Household whose gross annual income is in accordance with the requirements for “low-income families” as set forth in the HOME Regulations, Section 92.252.

***“Notice”*** means a notice in the form prescribed by Section 7.1.

***“Parties”*** means the City and the Developer; ***“Party”*** means the City or the Developer.

***“Predevelopment Budget”*** means the Predevelopment Budget attached hereto as Attachment No. 4, setting out the general categories of Eligible Predevelopment Costs and the Developer’s anticipated budget for such costs. The Predevelopment Budget is subject to revision from time to time as mutually agreed upon in writing between the Developer and the City. The City authorizes the City Manager to make such revisions to the Predevelopment Budget as deemed reasonably necessary to effectuate the purposes of this Agreement.

***“Predevelopment Loan”*** is defined in Section 3.2.

***“Predevelopment Loan Documents”*** means the following documents evidencing the Predevelopment Loan and required as consideration for the City to make the Predevelopment Loan: (i) this Agreement; (ii) the Predevelopment Promissory Note; and (iii) the Assignment.

***“Predevelopment Loan Proceeds”*** is defined in Section 3.2.

***“Predevelopment Promissory Note”*** means the HOME Predevelopment Promissory Note evidencing the Predevelopment Loan in substantially the form attached hereto as Attachment No. 5.

***“Preliminary Schedule”*** means the Preliminary Schedule attached hereto as Attachment No. 3, setting out the dates and/or time periods by which certain task set forth in this Agreement and the DDA must be accomplished. The Preliminary Schedule is subject to revision from time to time as mutually agreed upon in writing between the Developer and the City. The City authorizes the City Manager to make such revisions to the Preliminary Schedule as deemed reasonably necessary to effectuate the purposes of this Agreement.

***“Site”*** is defined in Recital C above.

***“Site Map”*** means the Site Map attached hereto as Attachment No. 1.

## **2. REPRESENTATIONS AND WARRANTIES**

### **2.1. Developer Representations and Warranties**

The Developer represents and warrants to the City as follows:

#### **2.1.1. Developer**

Developer is a nonprofit corporation duly organized, existing and in good standing under the laws of the State of California and has a tax exemption ruling from the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code of 1986 (26 CFR Part 1.501(C)(3)-1). Developer is also a CHDO and meets the requirements set forth in the HOME Regulation for a CHDO. The copies of the documents evidencing the organization of the Developer which have been delivered to the City are true and complete copies of the originals, as amended to the date of this Agreement. The Developer has full right, power and lawful authority to undertake all obligations as provided herein and the execution, performance and delivery of this Agreement, the Predevelopment Promissory Note and the Assignment by Developer have been fully authorized by all requisite actions on the part of the Developer.

#### **2.1.2. No Conflict**

Developer’s execution, delivery and performance of its respective obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the Developer is a party or by which it is bound.

### **2.1.3. Litigation**

There are no claims, causes of action or other litigation or proceedings pending or threatened against the Developer that will prevent or conflict with the execution, delivery and performance of Developer's obligations under this Agreement.

### **2.1.4. No Bankruptcy**

The Developer is not the subject of a bankruptcy proceeding.

### **2.1.5. No Default**

No Developer uncured default exists or is continuing under the HOME Regulations.

### **2.1.6. Developer Activities**

The Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, immediately give written notice of such fact or condition to the City.

## **2.2. City Representations and Warranties**

The City represents and warrants to Developer as follows:

### **2.2.1. City**

The City is a California municipal corporation. The City has full right, power and lawful authority to make the Predevelopment Loan as provided herein, and the execution, performance and delivery of this Agreement by the City have been fully authorized by all requisite actions on the part of the City.

### **2.2.2. No Conflict**

The City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the City is a party or by which it is bound.

### **2.2.3. Litigation**

There are no claims, causes of action or other litigation or proceedings pending or, threatened against the City that will prevent or conflict with the execution, delivery and performance of its obligations under this Agreement.

### **2.2.4. No Default**

No City uncured default exists or is continuing under the HOME Regulations.

### **3. FINANCIAL PROVISIONS**

#### **3.1. Sources of Financing**

The Parties' current general estimates of costs and financing for the Development are set forth in the Development Proposal. Developer anticipates that the Development will be financed with a combination of funds from the proceeds of the CalVet Loan Program, corporate sponsorship and grants, Developer's silent second loan assistance, Housing Authority write down of land value and the Predevelopment Loan.

#### **3.2. Predevelopment Loan**

The City hereby agrees to loan to Developer and Developer hereby agrees to borrow from the City, in such allocation and amounts as may be determined by the City, but in no event shall such loan exceed One Hundred Fifty Thousand Dollars (\$150,000) (the "Predevelopment Loan") and to utilize the proceeds of the Predevelopment Loan in accordance with the terms and conditions of the Predevelopment Loan Documents and the HOME Regulations.

The City shall make the Predevelopment Loan to Developer solely from funds available pursuant to the HOME Program. The Predevelopment Loan Proceeds shall be dispersed to Developer solely from such available funds as provided herein and shall be used by Developer solely to pay Eligible Predevelopment Costs.

##### **3.2.1. Predevelopment Promissory Note**

The Predevelopment Loan shall be made in accordance with and subject to the terms and conditions of this Agreement and the HOME Regulations and shall be evidenced by the HOME Predevelopment Promissory Note in substantially the form attached hereto as Attachment No. 5 (the "Predevelopment Promissory Note").

##### **3.2.2. Disbursement of Predevelopment Loan**

The Predevelopment Loan proceeds (the "Predevelopment Loan Proceeds") shall be used solely for Eligible Predevelopment Costs and shall be disbursed by City to or on behalf of Developer upon satisfaction of the conditions precedent and in accordance with the provisions of Section 3.3. Only the amount needed for Eligible Predevelopment Costs may be requested by the Developer.

##### **3.2.3. Recordation of Deed of Trust (HOME) and Declaration (HOME) Upon Closing of Site Conveyance**

Upon the Closing of the Site pursuant to the DDA, the Predevelopment Promissory Note and the obligations herein shall be secured by recordation of the Deed of Trust (HOME) in substantially the form attached hereto as Attachment No. 6 and the Declaration (HOME) in substantially the form attached hereto as Attachment No. 7 against the Site.

#### **3.3. Conditions Precedent to Disbursement of Predevelopment Loan Proceeds**

Upon satisfaction of the conditions precedent to the disbursement of the Predevelopment Loan Proceeds set forth in this Section 3.3 and within twenty (20) days after

receipt by the Housing Project Manager of the Disbursement Request defined in Section 3.3.8, the City shall disburse Predevelopment Loan Proceeds to or on behalf of Developer in an amount equal to the lesser of the amount approved in the Disbursement Request or the amount available to the City pursuant to the HOME Program. All disbursements of Predevelopment Loan Proceeds shall be recorded by the Housing Project Manager and acknowledged by the Developer on "Exhibit 'A'" to the Predevelopment Promissory Note. The City shall use best commercially reasonable efforts to wire transfer such disbursements when requested by Developer.

#### **3.3.1. Execution and Delivery of Documents to the City**

Developer shall have executed and delivered to the City this Agreement, the Predevelopment Promissory Note and the Assignment.

#### **3.3.2. No Default**

There shall exist no condition, event or act which would constitute a Default by Developer hereunder or which, upon the giving of notice or the passage of time, or both, would constitute a Default by Developer.

#### **3.3.3. Compliance with HOME Regulations**

Developer shall be in compliance with the applicable terms and conditions of the HOME Regulations.

#### **3.3.4. Governmental Regulations**

There shall be no condition, event or act existing in connection with the Development which constitutes, or would, with the passage of time, constitute a violation of any applicable Governmental Regulations.

#### **3.3.5. Proof of Insurance**

Developer, at its cost, shall have procured and be maintaining in full force and effect insurance consistent with the requirements of Section 4.6 of this Agreement and in the amounts specified therein. Developer shall have submitted to the City an insurance certificate or other acceptable written evidence demonstrating compliance with the foregoing requirement.

#### **3.3.6. Evidence of Expenditure**

Developer shall have submitted to the City evidence of expenditure or incurrence of costs, invoices, receipts, cancelled checks or other written documentation satisfactory to the City Manager evidencing Developer's incurrence of Eligible Predevelopment Costs.

#### **3.3.7. Representations and Warranties**

All representations and warranties of Developer herein contained shall be true and correct as if made on and as of the date of the disbursement.



### **3.3.8. Disbursement Request**

Developer shall have submitted to the City Manager a written disbursement request in a form approved by the City Manager and which shall include copies of invoices and receipts. The Disbursement Request shall set forth the amount of the requested disbursement of Predevelopment Loan Proceeds and shall certify that: (a) all conditions precedent to disbursement of the Predevelopment Loan Proceeds set forth in Section 3.3 have been and remain satisfied; (b) only the amount needed for Eligible Predevelopment Costs has been requested by the Developer; and (c) no Default has occurred and is continuing under the Predevelopment Loan Documents.

## **4. PREDEVELOPMENT ACTIVITIES**

### **4.1. Preliminary Schedule**

Developer shall diligently pursue its respective predevelopment activities and perform such tasks as are set forth in the Preliminary Schedule. The Preliminary Schedule shall be subject to further revision from time to time as mutually agreed upon in writing between the Developer and the City as the Parties deem reasonably necessary to effectuate the purposes of this Agreement.

### **4.2. Scope of Predevelopment Activities**

The Developer shall, at its own expense, engage in predevelopment activities consistent with the negotiating tasks set forth in the DDA, including, but limited to, determination of financing and development cost, planning approvals relating to the Entitlements, and due diligence related to the physical condition of the Site and any title issues related thereto.

### **4.3. HOME Regulations Submissions**

The Developer and the City will share responsibility for the preparation and submission to HUD of all submissions required by the HOME Regulations, including, but not limited to, the Program Schedule, Development Proposal, the Budget, and the Quarterly Reports (all as defined in the HOME Regulations), and all required amendments thereto in accordance with the Preliminary Schedule and Predevelopment Budget and the requirements of the HOME Regulations.

### **4.4. Work Product**

Upon completion of any work product, Developer shall promptly provide to the City copies of all studies, plans, documents and other writings, drawings and work product, except attorney-client privileged documents, prepared by or for the Developer in connection with the Development. Pursuant to the Assignment, Developer secures the obligation to repay the Predevelopment Loan and its obligations under this Agreement by assignment to the City of any and all rights to such work product in an event of Default by the Developer and/or termination of this Agreement. Developer agrees to execute such additional documents as reasonably required by the City to evidence the Assignment and to exercise best efforts to obtain the consent, if necessary, of the consultants preparing such work product.

#### **4.5. Compliance With Laws**

##### **4.5.1. General Compliance**

Developer shall comply with all applicable Governmental Regulations in connection with the predevelopment, construction, use and operation of the Development, including all applicable federal, state and local statutes, ordinances, regulations and laws, including without limitation, all applicable federal, state, and local labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, Government Code §§ 4450 *et seq.*, and Government Code §§ 11135 *et seq.*

##### **4.5.2. Intentionally Deleted**

##### **4.5.3. Nondiscrimination in Employment**

Developer certifies and agrees that all persons employed or applying for employment by it, its subsidiaries, or holding companies, and all contractors, subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. § 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b *et seq.*, 42 U.S.C. § 1981, the California Fair Employment and Housing Act, Government Code §§ 12900 *et seq.*, the California Equal Pay Law, Labor Code § 1197.5, Government Code § 11135, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended.

#### **4.6. Insurance.**

Prior to the disbursement of any Predevelopment Loan Proceeds (except as noted below), and without limiting Developer's indemnity obligations set forth in the Agreement, Developer shall procure and maintain in full force during the term of this Agreement, the following forms of insurance coverage:

a. Workers' Compensation Insurance. By executing this Agreement, Developer certifies that it is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. Developer shall carry the insurance or provide for self-insurance required by California law to protect Developer from claims under the Workers' Compensation Act. Prior to the City's first disbursement of any Predevelopment Loan Proceeds, the Developer shall file with the City either (1) a certificate of insurance showing that such insurance is in effect, or that they are self-insured for such coverage, or (2) a certified statement that they have no employees, and acknowledging that if they do employ any person, the necessary certificate of insurance will immediately be

filed with the City. Any certificate filed with the City shall provide that the City will be given ten (10) days prior written notice before modification or cancellation thereof.

b. General Commercial Liability and Automobile Insurance. Prior to the City's first disbursement of any Predevelopment Loan Proceeds, Developer shall obtain, and shall thereafter maintain during the term of this Agreement, commercial general liability insurance and automobile liability insurance as required to insure Developer against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of Developer. The City of Riverside and its officers, employees and agents, shall be named as additional insureds under the Developer's insurance policies.

All liability insurance shall be issued by insurance companies authorized to transact liability insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

Developer's commercial general liability insurance policies shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence and a general aggregate limit in the amount of not less than \$2,000,000, unless otherwise approved or reduced by the City's Risk Manager ("Risk Manager"), or designee.

Developer's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence unless otherwise approved or reduced by the Risk Manager, or designee.

These minimum amounts of coverage shall not constitute any limitation or cap on Developer's indemnification obligations under Section 4.7 hereof.

Copies of insurance policies or original certificates and additional insured endorsements evidencing the coverage required by this Agreement, for both commercial general and automobile liability insurance, shall be filed with the City and shall include the City of Riverside and its officers, employees and agents, as additional insureds. Said policies shall be in the usual form of commercial general and automobile liability insurance policies, but shall include the following provisions:

**It is agreed that the City of Riverside and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.**

The policies shall not be canceled unless thirty (30) days prior written notification of intended cancellation has been given to the City by certified or registered mail, postage prepaid.

The City, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by Developer pursuant to this Agreement are adequate to protect Developer. If Developer believes that any required insurance coverage is inadequate, they will obtain such additional insurance coverage as it deem adequate, at its sole expense.

c. In addition to any other remedies the City may have if Developer fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, the City may at its sole option:

(1) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from the Predevelopment Loan Proceeds.

(2) Withhold any further disbursement of the Predevelopment Loan Proceeds until Developer demonstrates compliance with the requirements hereof.

Exercise of any of the above remedies, however, is an alternative to other remedies the City may have and is not the exclusive remedy for Developer's failure to maintain insurance or secure appropriate endorsements. Nothing herein contained shall be construed as limiting in any way the extent to which Developer may be held responsible for payments of damages to persons or property resulting from Developer's performance of the work covered under this Agreement.

#### **4.7. Indemnity**

Developer shall defend, indemnify, and hold the Indemnified Parties harmless from and against any and all actions, suits, proceedings, claims, demands, damages, losses, liens, defense costs or liabilities of any kind or nature whatsoever (collectively, "Claims") which may be brought, made, filed against, imposed upon or sustained by the Indemnified Parties, or any of them, alleging or relating to (i) any activities of Developer relating to the Development; (ii) any breach of the terms and conditions of this Agreement or the Predevelopment Loan Documents by Developer; (iii) any injury or death of persons or damage to property, including property owned by or under the care and custody of the Indemnified Parties, which such injury, death or Claim arises from or is attributable to or caused by the acts or omissions of Developer, or its respective officers, agents, contractors or employees, in connection with or pertaining to this Agreement, the Site or the Development. The City shall notify the Developer of any such Claim, shall tender its defense to Developer, and assist Developer, as may be reasonably requested, in such defense. Upon such notification and tender, Developer shall have independent duties to defend such Claim, and to indemnify the Indemnified Parties except to the extent that such injury, death or damage is determined by a court of competent jurisdiction to have been caused by the negligent or willful misconduct of the Indemnified Parties or any of them. Payment of a Claim shall not be a condition precedent to an Indemnified Party's right to defense and indemnity.

The indemnification obligations of Developer set forth in this Section 4.7 shall survive any termination or expiration of this Agreement.

### **5. COVENANTS, CONDITIONS AND RESTRICTIONS**

#### **5.1. Use in Accordance with General Plan, Municipal Code and Entitlements**

Developer covenants and agrees that Developer shall devote the Site to the uses specified in the City's General Plan and applicable zoning ordinances, as may be amended. All uses conducted on the Site, including, without limitation, the construction and operation of the Development and all activities undertaken by the Developer pursuant to this Agreement, shall

conform to all applicable provisions of the City's Municipal Code and all City permits and entitlements.

## **5.2. Covenants Regarding Affordable Housing**

Developer acknowledges that the purpose of the Predevelopment Loan is to facilitate the development of affordable "for sale" single family housing to Low Income Households. Pursuant to such purpose, Developer acknowledges and agrees that the Affordable Units to be occupied by Low Income Households

### **5.2.1. Affordable Units**

Developer acknowledges that the purpose of the City's assistance is to encourage homeownership among "low-income families" as defined by 24 CFR 92.203. Pursuant to such purpose, Developer covenants and agrees to make available and sell at all of the units constructed on the Site consistent with applicable requirements of the Agreement, the HOME Program, including but not limited to 24 CFR 92.254, and this Declaration.

### **5.2.2. Term of Affordability Covenants**

Developer covenants and agrees to restrict the sale of the Affordable Units to sale and resale exclusively to homebuyers who are low income families, until such date as is five (5) years from the date of the initial sale of each Affordable Unit by Developer.

### **5.2.3. Owner Occupancy.**

Developer agrees that the Affordable Units shall be restricted to occupancy by the owners of the Affordable Units in accordance with the Agreement.

### **5.2.4. Developer's Silent Second Financing**

Developer agrees that its proposed silent second financing shall provide terms that, upon the original HOME-assisted owner's resale of an Affordable Unit, the silent second financing shall not impede or otherwise conflict with the resale and recapture requirements set forth in 24 CFR 92.254(a)(5), which terms may include reducing the outstanding balance on the silent second loan or such other terms necessary to assure that the Affordable Unit will be available to a reasonable range of low-income homebuyers and the original owner will be affordable a fair return on investment consistent with the HOME Program requirements. Such terms contained in Developer's silent second financing documents shall be subject to the reasonable review and approval of the City prior to the initial sale of any Affordable Unit. The Declaration (HOME) shall not be subordinate to any deed of trust or other recorded instrument related to Developer's silent second loan.

## **5.3. HOME Program Covenants**

With respect to the Developer's predevelopment activities undertaken in connection with this Agreement and with respect to activities pursuant to the DDA, Developer acknowledges the obligation to comply with the following covenants to the extent applicable:

**5.3.1. Qualification as Affordable Housing**

Developer shall develop the Site in accordance with the requirements of the HOME Program so as to qualify the housing on the Site as affordable housing.

**5.3.2. Qualifications as to Homeownership**

Developer shall comply with the requirements of 24 CFR 92.254.

**5.3.3. Handicapped Accessibility**

If and to the extent applicable, Developer shall comply with (a) Section 504 of the Rehabilitation Act of 1973, and implementing regulation at 24 CFR Part 8C governing accessibility of projects assisted under the HOME Program; and (b) the Americans with Disabilities Act of 1990, and implementing regulations at 28 CFR Parts 35-36 in order to provide handicapped accessibility to the extent readily achievable.

**5.3.4. Lead-Based Paint**

Developer shall comply with the requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and Residential Lead-Based Paint Hazard Reduction Act of 1992 and implementing regulations at 24 CFR Part 35.

**5.3.5. Affirmative Marketing**

Developer shall implement and perform such affirmative marketing procedures and requirements (24 CFR 92.351) for the Development as the City hereafter adopts and delivers to Developer in its Affirmative Fair Housing Marketing Plan.

**5.3.6. Equal Opportunity and Fair Housing**

Developer shall carry out the construction and perform its obligation under this Agreement in compliance with all of the federal laws and regulations regarding equal opportunity and fair housing described in 24 CFR 92.350.

**5.3.7. Property Standards**

Developer shall comply with 24 CFR 92.251.

**5.3.8. Displacement and Relocation**

Developer acknowledges and agrees that, pursuant to 24 CFR 92.253 and consistent with the other goals and objectives of this part, the City must ensure that it has taken all reasonable steps to minimize the displacement of persons as a result of the Development, if any. Furthermore, to the extent applicable and to the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary and affordable dwelling units on the Site upon completion of construction. Developer agrees to cooperate fully and completely with the City in meeting the requirements of 24 CFR 92.253 and shall take all actions and measures reasonable required by the City Manager in connection therewith.

#### **5.3.9. Records and Reports**

Developer shall maintain and from time to time submit to the City such records, reports and information as the Executive Director may reasonably require in order to permit the City to meet the record keeping and reporting requirements required of it pursuant to 24 CFR 92.508.

#### **5.3.10. Labor Standards(Davis-Bacon)**

In the event that the Executive Director determined that the Development will have 12 or more HOME-assisted units, any contract for construction shall contain a Prevailing Wage Clause requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of the United States Department of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-5), will be paid to all laborers and mechanics employed in the construction of the Development, and such contract(s) shall also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332). Participating contractors, subcontractors, and other participants must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. The Developer shall supply to the City a certification, in form and substance satisfactory to HUD and the City Manager, as to compliance with the provisions of this section before receiving any disbursement of HOME Funds. In addition, to the extent that

#### **5.3.11. Use of Debarred, Suspended, or Ineligible Participants**

Developer shall comply with the provisions of 24 CFR 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status.

#### **5.3.12. Maintenance of Drug-Free Workplace**

Developer shall certify that Developer will provide a drug-free workplace in accordance with 24 CFR Part 24F.

#### **5.3.13. Other Program Requirements**

Developer shall carry out each activity in compliance with all federal laws and regulations described in subpart H of 24 CFR 92, except that Developer does not assume the City's responsibilities for environmental review as set forth in 24 CFR 92.352 or the intergovernmental review process in 24 CFR 92.357.

#### **5.3.14. Requests for Disbursements of Funds**

Notwithstanding anything contained in this Agreement to the contrary, Developer may not request disbursements of funds under this Agreement until the funds are needed for payment of Eligible Predevelopment Costs. The amount of each request shall be limited to the amount needed.

**5.3.15. Eligible Predevelopment Costs**

Developer shall use Predevelopment Loan Proceeds only to pay costs defined as “allowable costs” pursuant to 24 CFR 92.301(a)(2).

**5.3.16. Conflict of Interest**

Developer shall comply with the conflict of interest provisions set forth at 24 CFR 570.611.

**5.3.17. Lobbying**

(a) No federally appropriated funds have been paid or will be paid, by or on behalf of Developer, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

(b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Agreement, Developer shall complete and submit HUD Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions;

(c) Developer will require that the language of Paragraph (d) of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and

(d) Lobbying Certification – Paragraph (d) – This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a pre-requisite for making or entering into this transaction imposed by 31 U.S.C. Section 1352, “Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.” Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000.00), and not more than one hundred thousand dollars (\$100,000.00) for each such failure.

**5.3.18. Other HOME Program Requirements**

Developer shall comply with all other applicable requirements of the HOME Program.



## **6. TERMINATION, DEFAULTS AND REMEDIES**

### **6.1. Termination Due to Impediments for Project Development; Waiver**

The Parties agree that the following matters are conditions precedent to the City's and Developer's ability to proceed with the Development and to fulfill the terms and conditions of this Agreement. The Parties' ability to perform responsibilities hereunder is substantially contingent upon actions by third parties over which Developer has limited control, or upon factual circumstances which cannot be fully determined as of the date of this Agreement ("Impediment Contingencies"):

(a) The commitment of all projected financing, including loans and tax credit equity;

(b) The conveyance of the Site by the City to the Developer pursuant to a DDA (except for due to Developer default); and

(c) The receipt of all other necessary government entitlements, approvals and permits which are required to construct the Development.

In the event that an Impediment Contingency does not occur as reasonably anticipated under Preliminary Schedule (and any amendments thereto or subsequently agreed upon schedules of performance), the City may deem it an impediments to project development reasonably beyond the control of Developer rendering the Development infeasible and, upon delivery to the City of the plans, reports and data studies, plans, and documents pursuant to the Assignment, the City may consider waiving repayment of the Predevelopment Loan and neither Party shall have any liability to the other except for continuing indemnities provided elsewhere in this Agreement.

### **6.2. Default**

For purposes of this Agreement, a "Default" shall mean a failure to satisfy, timely perform, comply with or observe any of the material conditions, provisions, terms, covenants or representations contained in the Predevelopment Loan Documents, and such failure having continued uncured or without the defaulting party commencing to diligently cure for thirty (30) calendar days after notice thereof in writing is mailed by the injured party to the defaulting party; provided, however, that if a different period or notice requirement is specified for any particular default under any other provision of this Agreement, including any of the Attachments, the specific provision shall control; and provided further, that if such failure is not reasonably capable of being cured within such thirty (30) day or different period, despite the defaulting party's good faith and timely efforts, such time as is reasonably necessary to complete such cure, but in no event shall such time exceed ninety (90) calendar days after notice thereof is mailed to the defaulting party.

### **6.3. Remedies for Developer Default**

The occurrence of any Developer Default, either at the option of the City or automatically where so specified, shall give the City the right to the following:

(a) The City shall have the right to terminate this Agreement.

(b) The City shall have the right to exercise all of its rights under the Assignment.

In addition to the remedies set forth above, in the event that HUD requires recovery or reimbursement of all or a portion of the Predevelopment Loan due to default under the HOME Regulations, and the default is due to Developer's misappropriation or intentional misapplication of monies advanced by the City under this Agreement for purposes other than those authorized herein, then the City shall have the right to cause all indebtedness under this Agreement and the Predevelopment Promissory Note, together with any accrued interest thereon, to become immediately due and payable, to the extent required to reimburse HUD.

#### **6.4. Limitation on Recourse**

Notwithstanding anything to the contrary herein or in any document executed by Developer related to this Agreement, except in the event of: (i) Developer's misappropriation or intentional misapplication of monies advanced by the City under this Agreement for purposes other than those authorized herein; or (ii) Developer's fraud or intentional misrepresentation made by Developer in connection with its obligations under this Agreement, the City's sole recourse hereunder and under the Predevelopment Promissory Note and any other document executed by Developer in connection with this Agreement shall be pursuant to the Assignment, and the City shall have no recourse to any assets of Developer other than the Plans, Reports and Data as provided in the Assignment.

#### **6.5. Rights and Remedies Are Cumulative**

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

#### **6.6. Inaction Not a Waiver of Default**

Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

#### **6.7. Applicable Law**

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

#### **6.8. Non-Liability of Officials and Employees of the City**

No member, official or employee of the Developer or City shall be personally liable to Developer or City, as appropriate, or any successor in interest, in the event of any Default or breach hereunder or for any amount which may become due hereunder or on any obligations under the terms of this Agreement.

## **6.9. Attorneys' Fees**

In any action between the Parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action or other proceeding shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and reasonable attorneys' fees.

As used herein, the terms "attorneys' fees" or "attorneys' fees and costs" means the fees and expenses of counsel to the Parties hereto (including, without limitation, in-house or other counsel employed by any Party) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

## **7. GENERAL PROVISIONS**

### **7.1. Notices, Demands and Communications Between the Parties**

Unless otherwise specified in this Agreement, it shall be sufficient service or giving of any notice, request, certificate, demand or other communication if the same is sent by (and all notices required to be given by mail will be given by) first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery. Unless a different address is given by any party as provided in this Section, all such communications will be addressed as follows:

To Developer:	Habitat for Humanity Riverside, Inc. Attn: Kathy Michalak, Executive Director 2180 Iowa Ave Riverside, California 92507
To City:	City of Riverside Attn: City Manager 3900 Main Street, 7 <sup>th</sup> floor Riverside, California 92522
Copies to:	City of Riverside Attn: Community & Economic Development Director 3900 Main Street, Third Floor Riverside, California 92522

City of Riverside  
Attn: City Attorney  
3900 Main Street, 5<sup>th</sup> Floor  
Riverside, California 92522

Any Notice shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

**7.2. Conflicts of Interest**

No member, official or employee of the City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

**7.3. Warranty Against Payment of Consideration for Agreement**

Developer warrants that it has not paid or given and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as project managers, architects, engineers, attorneys, and public relations consultants.

**7.4. Nonliability of Officials and Employees**

No member, official, employee, representative or agent of the City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Developer or successor, or on any obligation under the terms of this Agreement.

**7.5. Approval by the City and Developer**

Approvals required of the Parties shall be given within the time set forth in the Schedule of Performance or, if no time is given, within a reasonable time. Wherever this Agreement requires the City or Developer to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval shall not be unreasonably withheld or delayed. In the event that a Party declines to approve any contract, document, plan, proposal, specification, drawing or other matter, such denial shall be in writing and shall include the reasons for such denial. The Party considering the request for such approval shall use commercially reasonable efforts to respond to such request for approval within thirty (30) days of receipt unless expressly provided to the contrary herein.

**7.6. Plans and Data**

If this Agreement is terminated, pursuant to the exercise of the City's rights under the Assignment of Plans, Reports and Data, Developer shall deliver to the City any and all plans, drawings, studies and related documents concerning the Development within Developer's possession and control, without representation or warranty. Upon delivery to the City, the City shall have the right to use such materials as it deems necessary and appropriate to fulfill the purposes of this Agreement without obligation to Developer.

#### **7.7. Force Majeure**

In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God or any other deity; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation including litigation challenging the validity of this transaction or any element thereof including the acquisition of the Site, or any portion thereof, unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or suppliers; acts of the other party; acts or failure to act of the City or any other public or governmental agency or entity (other than that acts or failure to act of the City shall not excuse performance by the City); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform or relief from default, including without limitation the allocation of the City revenues to the U.S. Department of Housing & Urban Development by a legislative act to fund deficits in the federal budget. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by mutual agreement among the City and the Developer. That notwithstanding, if said prevention or delay extends for one (1) year, any party, by notice in writing to the other, may terminate this Agreement.

#### **7.8. Applicable Law; Interpretation**

The laws of the State of California shall govern the interpretation and enforcement of this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and as though both of the parties participated equally in its drafting. Captions and organizations are for convenience only and shall not be used in construing meaning.

#### **7.9. Inspection of Books and Records, Reports**

The City or its designee has the right at all reasonable times to inspect the books and records and other related documents of the Developer pertaining to the satisfaction of their obligations hereunder as reasonably necessary for purposes of enforcing the provisions of this Agreement. Such books, records and related documents shall be maintained by the Developer at locations as agreed by the parties. Throughout the term of this Agreement, the Developer shall submit to the City reasonable written progress reports as and when reasonably requested by the City on all matters pertaining to the Development of the Site.

#### **7.10. Administration**

This Agreement shall be administered by the City Manager following approval of this Agreement by the City Council. Whenever a reference is made in this Agreement to an action, finding or approval to be undertaken by the City, the City Manager or designee is authorized to act on behalf of the City unless specifically provided otherwise or the context should require otherwise. The City Manager shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not substantially change the uses or development permitted on the Site, or add to

the costs of the City as specified herein or as agreed to by the City Council. Notwithstanding the foregoing, the City Manager may in his/her sole and absolute discretion refer any matter to the City Council for action, direction or approval.

**7.11. Mutual Cooperation**

Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement. To the extent that any lender to, or equity investor in the Development requires modifications to this Agreement or any attachment hereto, the City agrees to make such modification within a reasonable time on the condition that such modification does not materially change the rights and obligations of the Parties as set forth herein.

**7.12. Ground Breaking and Grand Openings**

To insure proper protocol and recognition of the City, the Developer shall cooperate with City staff in the organization of any Development-related ground breaking, grand openings or any other such inaugural events/ceremonies sponsored by the Developer and celebrating the development which is the subject of this Agreement providing City staff with at least two (2) weeks prior notice of any such event.

**7.13. Independent Contractor**

The parties agree that the Developer, in the performance of this Agreement shall act as and be an independent contractor and shall not act in the capacity of an agent, employee or partner of the City.

**7.14. Effective Date**

This Agreement shall take effect immediately upon the approval and execution of this Agreement by the City (the "Effective Date").

**8. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS**

This Agreement includes twenty-three (23) pages and Attachment Nos. 1 through \_\_ which constitute the entire understanding and agreement of the Parties. Three (3) duplicate originals of this Agreement shall be executed each of which shall be deemed to be an original. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

Except as otherwise provided herein, this Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and Developer.

*[Signatures On Next Page]*

IN WITNESS WHEREOF, the City and the Developer have signed this Agreement as of the date set opposite their signatures.

**“DEVELOPER”**

HABITAT FOR HUMANITY RIVERSIDE, INC.,  
a California nonprofit public benefit corporation

Dated: 7/13/15

By: Kathy M. Michalak  
Name: Kathy M. Michalak  
Its: EXECUTIVE DIRECTOR

Dated: 7/13/15

By: Nicholas Adcock  
Name: Nicholas Adcock  
Its: Treasurer

**“CITY”**

CITY OF RIVERSIDE, a California municipal  
corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Interim Community & Economic Development  
Director

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

IN WITNESS WHEREOF, the City and the Developer have signed this Agreement as of the date set opposite their signatures.

**“DEVELOPER”**

HABITAT FOR HUMANITY RIVERSIDE, INC.,  
a California nonprofit public benefit corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**“CITY”**

CITY OF RIVERSIDE, a California municipal  
corporation

Dated: \_\_\_\_\_

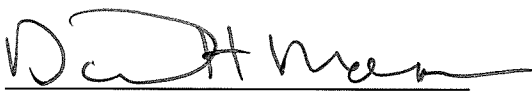
By: \_\_\_\_\_

Interim Community & Economic Development  
Director

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By:   
Special Counsel



IN WITNESS WHEREOF, the City and the Developer have signed this Agreement as of the date set opposite their signatures.

**“DEVELOPER”**

HABITAT FOR HUMANITY RIVERSIDE, INC.,  
a California nonprofit public benefit corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**“CITY”**

CITY OF RIVERSIDE, a California municipal  
corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Interim Community & Economic Development  
Director

ATTEST:

By: \_\_\_\_\_

City Clerk

APPROVED AS TO FORM:

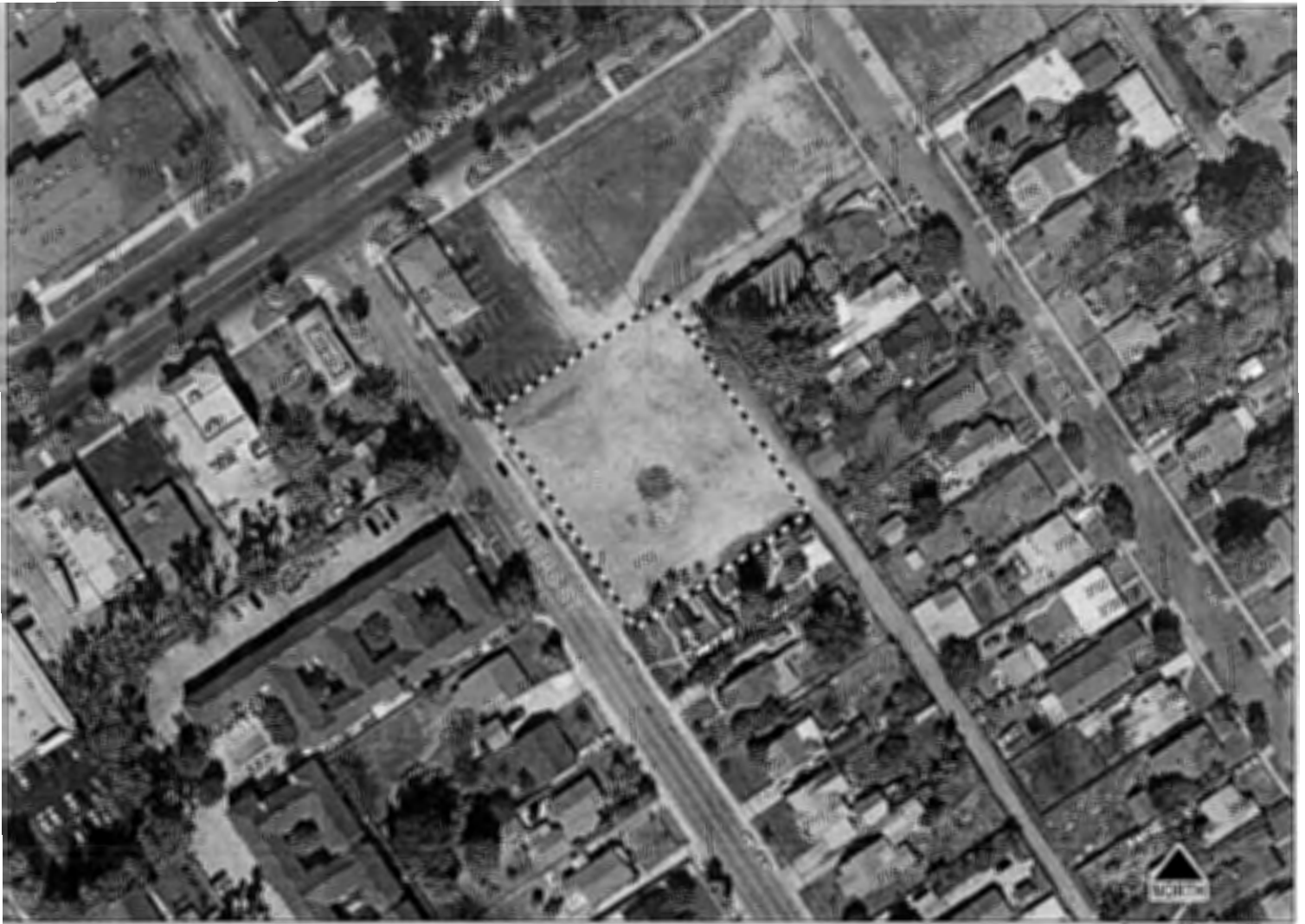
By: \_\_\_\_\_

Special Counsel

**ATTACHMENT NO. 1**

**SITE MAP**

**[To be inserted]**



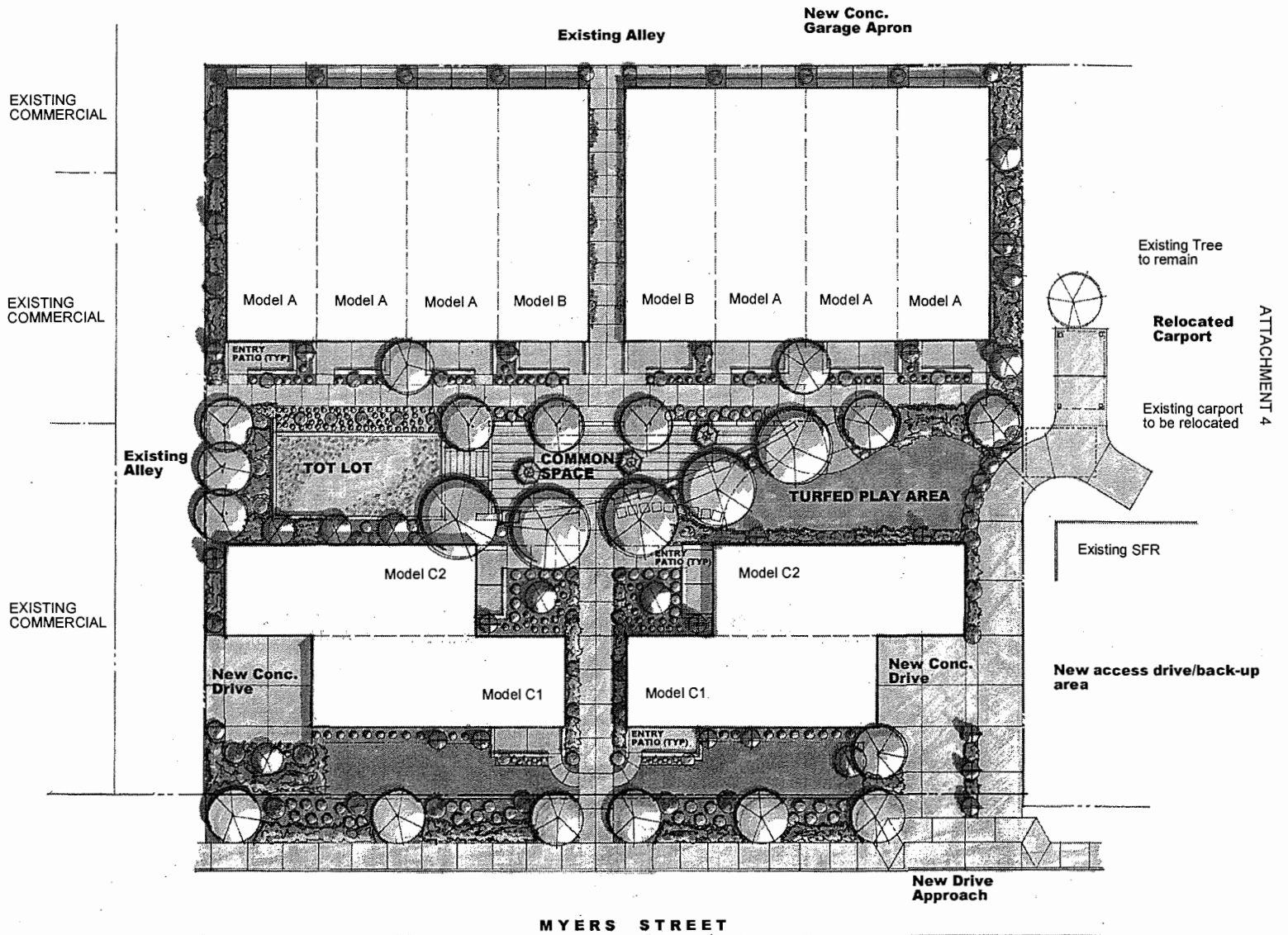
3755 Myers Street - Veterans Homeownership Project - Attachment 3

Feet

**ATTACHMENT NO. 2**  
**DEVELOPMENT PROPOSAL**

**[To be inserted]**

EXISTING SFR	EXISTING SFR	EXISTING SFR	EXISTING SFR	EXISTING SFR
--------------	--------------	--------------	--------------	--------------



ATTACHMENT 4

[www.autodesk.com/aut](http://www.autodesk.com/aut)

Consultant  
Address  
Address  
Phone  
Fax  
e-mail

Consultant  
Address  
Address  
Phone  
Fax  
e-mail

Contributor  
Address  
Address  
City and  
State

Consultant  
Address  
Address  
Phone  
Fax

Consultant	
Address	
Address	
Phone	
Fax	

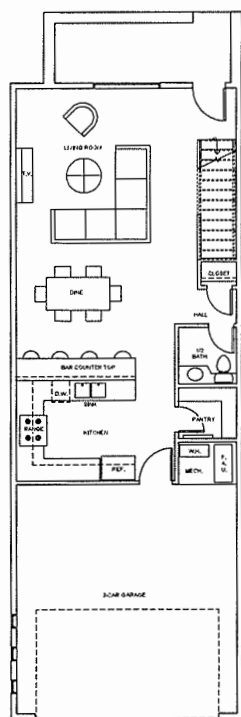
10

[illegible]

Owner
Project Name
MODEL A

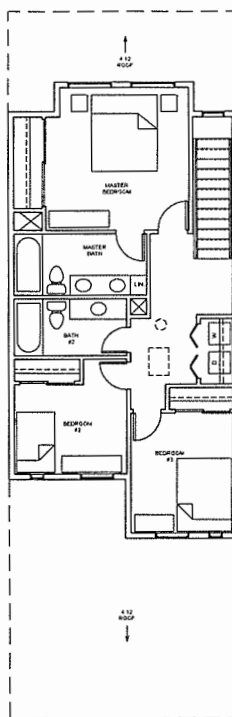
Project number	Project Number
Date	Issue Date
Drawn by	Author
Checked by	Checker
A-001	
Scale	1/4" = 1'-0"

1st FLOOR  
GROSS AREA 745 sq.ft.  
GARAGE 478 sq.ft.  
TOTAL 1,223 sq. ft.



① Level 1  
1/4" = 1'-0"

2nd FLOOR  
GROSS AREA 797 sq.ft.



② Level 2  
1/4" = 1'-0"

[illegible]

4-12 NORTH

MASTER BEDROOM #1

MASTER BATH

BATH #1

BEDROOM #2

B1

B2

B3

4-12 SOUTH

0000-0001-9100-0000

[www.motorola.com/mc](http://www.motorola.com/mc)

Consultant Address Phone Fax e-mail	Consultant Address Phone Fax e-mail	Consultant Address Phone Fax e-mail	Consultant Address Phone Fax e-mail	Consultant Address Phone Fax e-mail
---	---	---	---	---

Consultant Address Address Phone Fax e-mail	Consultant Address Address Phone Fax e-mail	Consultant Address Address Phone Fax e-mail	Consultant Address Address Phone Fax e-mail
--	--	--	--

Consultant Address Address Phone Fax e-mail	Consultant Address Address Phone Fax e-mail	Consultant Address Address Phone Fax e-mail
--	--	--

Consultant  
Address  
Address  
Phone  
Fax  
e-mail

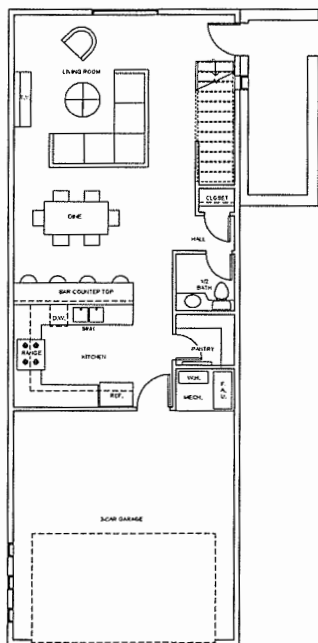
[illegible]

Owner
Project Name
MODEL C1

Project number	Project Number
Date	Issue Date
Drawn by	Author
Checked by	Checker
A-001	
Scale	1/4" = 1'-0"

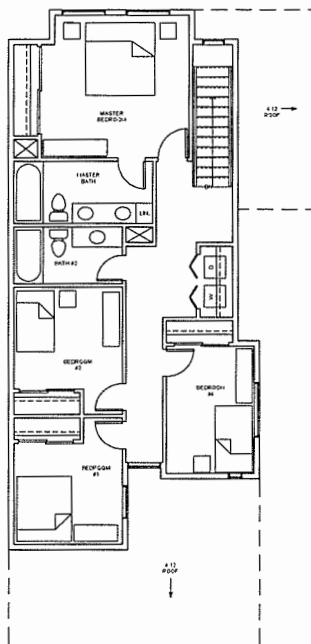
[illegible]

1st FLOOR  
GROSS AREA 745 sq. ft.  
GARAGE 444 sq. ft.  
TOTAL 1,189 sq. ft.



① Level 1  
1M = 1.0

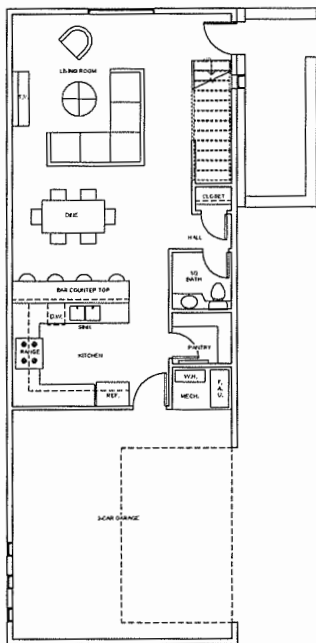
2nd FLOOR  
GROSS AREA 986 sq. ft.



② Level 2  
14" x 14"



GROSS AREA 745 sq. ft.  
GARAGE 444 sq. ft.  
TOTAL 1,189 sq. ft.



① Level 1  
14" x 14"

12'0" x 14'0" MASTER BEDROOM

BATH

L.V.

BATH #2

12'0" x 14'0" RECEPTION #1

RECEPTION #2

RECEPTION #3

RECEPTION #4

CLO

1/4" = 1'-0"

N

② Level 2  
1/4" = 1'-0"

[www.autodesk.com/news](http://www.autodesk.com/news)

Consultant Address Address Phone Fax e-mail	Consultant Address Address Phone Fax
--	--

Consult  
Address  
Address  
Phone  
Fax

Consultant  
Address  
Address  
Phone  
Fax  
e-mail

Consultant  
Address  
Address  
Phone  
Fax

Consultant  
Address  
Address  
Phone  
Fax

[illegible]

Owner
Project Name
MODEL C2

Project number	Project Number
Date	Issue Date
Drawn by	Author
Checked by	Checker
A-001	
Scale	1/4" = 1'-0"

1999



Arlington Veteran's Neighborhood - Myers Street Elevation



*Arlington Village's Neighborhood - Interior Courtyard Elevation*

**ATTACHMENT NO. 3**  
**PRELIMINARY SCHEDULE**

**[To be inserted]**

7/13/2015

ARLINGTON VETERAN'S PROJECT

<u>MILESTONE</u>	<u>DATE</u>
• DDA signed:	July 30, 2015
• Project approval by Planning Commission:	Sept. 17, 2015
• Project approval by City Council:	Nov. 10, 2015
• Tract Map approved by City:	Jan. 8, 2016
• Building plans approved:	Feb. 10, 2016
• Grading begins:	Feb. 22, 2016
• Pads poured:	April 27, 2016
• Construction begins/ Wall Raising:	May 7, 2016
• Interior finishes complete:	Oct. 15, 2016
• Landscaping complete:	Nov. 1, 2016
• COO's issued:	Nov. 16, 2016

**ATTACHMENT NO. 4**  
**PREDEVELOPMENT BUDGET**

**[To be inserted]**

**SINGLE-FAMILY HOUSING DEVELOPMENT**  
**Development Budget**

**Project:** Myers/Habitat - Veterans

**Key**  
White spaces indicate data entry

**DEVELOPMENT BUDGET**

ITEM	Cost	% Total	
<b>ACQUISITION</b>			
Building Acquisition	0	0%	
Land Acquisition	0	0%	
<b>UNIT CONSTRUCTION (see below)</b>	<b>1,525,250</b>	<b>54%</b>	
<b>OTHER CONSTRUCTION</b>			
Landscaping	0	0%	included in construction \$ below
Permits	600,000	21%	permits & impact fees (\$50k per unit)
Clearance and Demolition	0	0%	vacant land
Utility Connections & Tap Fees	60,000	2%	incl. water/sewer infrastructure
Contingency	60,000	2%	
<b>INFRASTRUCTURE</b>			
Streets and Sidewalks	27,000	1%	alley paving
Water and Sewer	0	0%	see utility connection and tap fees above
Stormwater & Drainage	0	0%	
Impact Fees		0%	see permit fees above
<b>PROFESSIONAL FEES</b>			
Site Planning	54,500	2%	entitlements (\$28.3) + subdivision (\$11.2) + WQMP-EIC (\$15k)
Architecture & Engineering	126,000	4%	architecture-structural engineering-energy calc/energy star
Real Estate Attorney	0	0%	
Consultant	60,000	2%	construction supervision
Survey	36,000	1%	
Market Study	0	0%	
Environmental	0	0%	
Organization Expense	12,000	0%	auditing/accounting
<b>FINANCE COSTS</b>			
Construction Loan Interest	6,369	0%	
Construction Origination	0	0%	
Appraisal	0	0%	
Construction Insurance	12,000	0%	
Property Taxes	12,000	0%	
<b>SOFT COSTS</b>			
Marketing	0	0%	
Other	0	0%	
<b>DEVELOPER FEE</b>	<b>240,000</b>	<b>8%</b>	See C39 on Profit & Loss Sheet
<b>TOTAL DEVELOPMENT COST</b>	<b>2,831,119</b>	<b>849,336</b>	<b>#NAME?</b>

**Construction/Rehab. Costs**

Model Number	Sq. Ft.	Cost/Sq. Ft.	Unit Cost	# Units	Total	Sales Price
1	1,232	103.17	127,105	4	508,422	200,000
2	1,232	103.17	127,105	4	508,422	200,000
3	1,270	100.08	127,102	4	508,406	210,000
4			0	0	0	
5			0	0	0	
6			0	0	0	
7			0	0	0	
<b>Average</b>			<b>127,104</b>	<b>12</b>	<b>1,525,250</b>	<b>203,333</b>

## ATTACHMENT NO. 5

### PREDEVELOPMENT PROMISSORY NOTE

Loan Amount: **\$150,000**

\_\_\_\_\_, 2015  
Riverside, California

**FOR VALUE RECEIVED, HABITAT FOR HUMANITY RIVERSIDE, INC.**, a California nonprofit public benefit corporation (the “Borrower”) promises to pay to the **CITY OF RIVERSIDE**, a California municipal corporation (“City”), or order, the principal sum of One Hundred Fifty Thousand Dollars (\$150,000.00), or so much of such principal as may be disbursed pursuant hereto and in accordance with Section 3 of that certain HOME Predevelopment Loan Agreement by and between the City and Borrower dated for identification purposes only as of \_\_\_\_\_, 2015 (the “Agreement”). The record of such disbursements shall be recorded on Exhibit “A” to this HOME Predevelopment Promissory Note (the “Note”) by the City and acknowledged by the Borrower. This Note evidences the obligation of Borrower to the City for the repayment of certain funds (the “Predevelopment Loan”) loaned to Borrower by the City and required to be paid by Borrower pursuant to the Agreement, in connection with certain Eligible Predevelopment Costs related to the proposed Development on real property located at 3753 Myers Street within the City of Riverside, California and further identified as Assessor Parcel Nos. (APN) 234-101-051 (the “Site”). All capitalized terms unless otherwise defined herein shall have the same meaning as set forth in the Agreement.

1. Source of Funds.

The City contemplates that it shall utilize funds allocated to the City from the HOME Program to fund the Predevelopment Loan.

2. Interest.

2.1 Basic Interest. Except as provided in section 2.2 below, the disbursed and unpaid principal balance of the Predevelopment Loan shall bear zero percent (0.0%) interest for the period of time commencing on the date on which the Predevelopment Loan proceeds are first disbursed for the account of Borrower.

2.2 Default Rate. Any amounts (including but not limited to amounts of principal and interest on the Predevelopment Loan) which Borrower does not pay when otherwise due under the terms of this Note, shall bear interest at the rate of ten percent (10%) per annum (“Default Rate”), simple interest, from the date which is ten (10) days after such amount would otherwise be due until the date paid.

3. Maturity Date.

So long as the Borrower is in compliance with the terms and conditions of the Agreement, no payment of principal or interest hereunder shall be due from Borrower to the City during the term of this Note. In lieu of repayment, the outstanding balance of principal and interest on this Note shall be credited in an amount equal to one-eleventh (1/11) of such outstanding balance upon the initial occupancy of each Affordable Unit by a low-income family.



Upon the fifth (5th) anniversary of this Note and compliance throughout such time with the terms and conditions of this Note and the Agreement, the total amount of any remaining outstanding balance of principal, interest and any other amounts owed under this Note shall, at the election of the City and upon notice to Borrower thereof, become due and payable thirty (30) days after the end of the calendar quarter in which the fifth (5th) anniversary occurs.

In no event shall the credits granted by the City under this Section 3 exceed an aggregate amount equal to the Predevelopment Loan.

Failure to declare such amounts due and payable shall not constitute a waiver on the part of the City to declare them due subsequently.

4. Acceleration.

Notwithstanding the payment terms set forth in Section 3 above, upon the occurrence of any "Event of Default" as set forth in Section 11 below, the entire outstanding principal balance of the Note, together with any outstanding interest and other amounts payable thereunder, shall, at the election of the City and upon notice to Borrower thereof, become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Borrower.

5. Prepayment; Application of Payments.

At any time after the disbursement of the Predevelopment Loan proceeds, Borrower may prepay all or a portion of the unpaid principal amount of the Predevelopment Loan and accrued interest and any other sums outstanding without penalty. All payments, including any prepayments or funds received upon acceleration pursuant to Section 4 above, shall be applied first toward any outstanding costs of collection or other amounts (excluding Predevelopment Loan principal or interest thereon) due under this Note or the Agreement, then toward outstanding interest accrued at the Default Rate, if any, then toward any deferred principal, and finally toward the remaining principal balance under the Note.

6. Security For Note.

Borrower's obligations under this Note and the Agreement shall, at all times during which any amount remains outstanding, be secured by that certain Assignment of even date herewith, and of which the City is the beneficiary and that certain Deed of Trust which shall be recorded Site upon the conveyance of the Site from the City to the Developer.

7. Obligation of Borrower Unconditional.

The obligation of Borrower to repay the Predevelopment Loan and all accrued interest thereon shall be absolute and unconditional, and until such time as all of the outstanding principal of and interest on this Note shall have been fully paid or repayment waived by the City, Borrower agrees that it: (a) will use the funds solely for the purposes set forth herein; and (b) will not terminate or suspend any payment or obligations under this Note, the Agreement, or any other document executed hereunder or in connection herewith for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration, commercial

frustration of purpose, or any duty, liability or obligation arising out of or in connection with this Note, the Agreement or any document executed hereunder or in connection herewith.

8. Purpose of Predevelopment Loan.

The Predevelopment Loan Proceeds shall be used by Borrower only to pay for Eligible Predevelopment Costs and such other uses previously approved in writing by the City in accordance with the Agreement. In no event shall Borrower use or otherwise invest the proceeds of the Predevelopment Loan except as expressly provided in this Note and the Agreement.

9. Covenants of Borrower.

As additional consideration for the making of the Predevelopment Loan by the City, Borrower covenants as follows:

9.1 Compliance with Agreement and Assignment. Borrower shall comply with all of its obligations under the Agreement and the Assignment. Any amounts payable by Borrower under the Agreement or the Assignment (other than amounts also payable hereunder) shall be deemed added to the principal amount of the Predevelopment Loan payable hereunder.

9.2 Other Loans. Borrower shall comply with all monetary and non-monetary covenants associated with any loan secured by an interest in the Site or the Development. Borrower shall provide to the City a copy of any notice of default within five business days after receiving any notice of a default or alleged default of such covenants by Borrower, and Borrower shall promptly cure any such default and cooperate in permitting the City, to the extent the City in its sole discretion elects to do so, to cure or assist in curing the default. Any cost or expenditure incurred by the City in providing or assisting in such a cure shall be deemed added to the outstanding principal amount of the Predevelopment Loan.

10. No Assumption of Note.

This Note shall not be assumable by a third-party without the City's written consent, which consent shall be at the sole discretion of the City.

11. Events of Default and Remedies.

11.1 Borrower Events of Default. The occurrence of any of the circumstances described in this Section 11.1 shall constitute an event of default by Borrower hereunder ("Event of Default"). Notwithstanding anything herein to the contrary, the herein described notice requirements and cure periods shall not apply to any Event of Default described in Sections 11.1(c) through 11.1(e) below.

(a) The failure of Borrower to pay or perform any monetary covenant or obligation hereunder or under the terms of the Agreement, without curing such failure within ten (10) days after receipt of written notice of such default from the City (or from any party authorized by the City to deliver such notice as identified by the City in writing to Borrower).

(b) The failure of Borrower to perform any non-monetary covenant or obligation hereunder, or the Agreement, without curing such failure within thirty (30) days after

receipt of written notice of such default from the City (or from any party authorized by the City to deliver such notice as identified by the City in writing to Borrower) specifying the nature of the event or deficiency giving rise to the default and the action required to cure such deficiency. Provided, however, that if any default with respect to a non-monetary obligation is such that it cannot be cured within a 30-day period, it shall be deemed cured if Borrower commences the cure within said 30-day period and diligently prosecutes such cure to completion thereafter.

(c) The material falsity, when made, of any representation or breach of any warranty or covenant made by Borrower under the terms of this Note, the Agreement or the Assignment;

(d) Borrower or any constituent general partner, or majority shareholder, of Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian or the like of its property, (ii) fail to pay or admit in writing its inability to pay its debts generally as they become due, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent or (v) commence a voluntary petition that is not withdrawn within ten (10) days of the filing thereof or answer seeking an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against it in any bankruptcy or insolvency proceeding;

(e) If without the application, approval or consent of Borrower, a proceeding shall be instituted in any court of competent jurisdiction, under any law relating to bankruptcy, in respect of Borrower or any constituent general partner or majority shareholder of Borrower, for an order for relief or an adjudication in bankruptcy, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of Borrower or of all or any substantial part of Borrower's assets, or other like relief in respect thereof under any bankruptcy or insolvency law, and, if such proceeding is being contested by Borrower, in good faith, the same shall (i) result in the entry of an order for relief or any such adjudication or appointment, or (ii) continue undismissed, or pending and unstayed, for any period of ninety (90) consecutive days;

(f) If Borrower is in default under the terms of the other financing, or any other secured or unsecured obligation relating to the Development, unless such default is cured within the cure period, if any, applicable thereto under the terms and obligation which is in default.

11.2 City Remedies. Upon the occurrence of an Event of Default hereunder, the City may, in its sole discretion, take any one or more of the following actions:

(a) By notice to Borrower, except in the case of a default by Borrower under Section 11.1(d) or Section 11.1(e) in which event no notice shall be required, declare the entire then unpaid principal balance of the Predevelopment Loan immediately due and payable, and the same shall become due and payable without further demand, protest or further notice of any kind, all of which are expressly waived. Upon such declaration, outstanding principal and (to the extent permitted by law) interest and any other sums outstanding in connection with the Predevelopment Loan shall thereafter bear interest at the Default Rate, payable from the date of such declaration until paid in full;

(b) Subject to the nonrecourse provisions of Section 20 below, take any and all actions and do any and all things which are allowed, permitted or provided by law, in equity or by statute, in the sole discretion of the City, to collect the amounts then due and thereafter to become due hereunder, to exercise its rights under the Assignment, and to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Note, the Agreement or under any other document executed in connection herewith;

(c) Subject to the nonrecourse provision of Section 20 below, upon the occurrence of an Event of Default which is occasioned by Borrower's failure to pay money, the City may, but shall not be obligated to, make such payment. If such payment is made by the City, Borrower shall deposit with the City, upon written demand therefor, such sum plus interest at the Default Rate. In either case, the Event of Default with respect to which any such payment has been made by the City shall not be deemed cured until such repayment (as the case may be) has been made by Borrower. Until repaid, such amounts shall have the security afforded disbursements under this Note;

(d) Subject to the nonrecourse provisions of Section 20 below, upon the occurrence of an Event of Default described in Section 11.1(d) or 11.1(e) hereof, the City shall be entitled and empowered by intervention in such proceedings or otherwise to file and prove a claim for the whole amount owing and unpaid on the Predevelopment Loan and, in the case of commencement of any judicial proceedings, to file such proof of claim and other papers or documents as may be necessary or advisable in the judgment of the City and its counsel to protect the interests of the City and to collect and receive any monies or other property in satisfaction of its claim.

11.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City intended to be exclusive of any other available remedy or remedies, but each such remedy shall be cumulative and shall be in addition to every other remedy given under this Note or now existing at law or in equity or by statute; and may be exercised in such number, at such times and in such order as the City may determine in its sole discretion. No delay or omission to exercise any right or power upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient by the City. In order to entitle the City to exercise any right or remedy reserved to it under this Note, no notice shall be required except as expressly provided herein.

11.4 City Default and Borrower Remedies. Upon fault or failure of the City to meet any of its obligations under this Note without curing such failure within thirty (30) days after receipt of written notice of such failure from Borrower specifying the nature of the event or deficiency giving rise to the default and the action required to cure such deficiency, Borrower may, as its sole and exclusive remedies:

- (a) Demand and obtain payment from the City of any sums due to or for the benefit of Borrower pursuant to the express terms of this Note;

- (b) Bring an action in equitable relief seeking the specific performance by the City of the terms and conditions of this Note or seeking to enjoin any act by the City which is prohibited hereunder; and/or
- (c) Bring an action for declaratory relief seeking judicial determination of the meaning of any provision of this Note.

Without limiting the generality of the foregoing, Borrower shall in no event be entitled to, and hereby waives, any right to seek consequential damages of any kind or nature from the City arising out of or in connection with this Note, and in connection with such waiver Borrower is familiar with and hereby waives the provision of Section 1542 of the California Civil Code which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

12. Agreement to Pay Attorneys' Fees and Expenses.

In the event that either party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this Note or any of the Predevelopment Loan Documents, defined as the Agreement, this Note, the Assignment, and all other documents contemplated by the Agreement, as a consequence of any breach by the other party of its obligations thereunder, the prevailing party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and out-of-pocket expenditures paid by the losing party. The attorneys' fees so recovered shall include fees for prosecuting or defending any appeal and shall be awarded for any supplemental proceedings until the final judgment is satisfied in full. In addition to the foregoing award of attorneys' fees, the prevailing party in any lawsuit on this Note or any other Predevelopment Loan Document shall also be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. In addition to the foregoing, Borrower agrees to pay or reimburse the City, upon demand by City, for all costs incurred by Authority in connection with enforcement of this Note, and any other Predevelopment Loan Document, including without limitation, reasonable attorneys' fees and costs, if there shall be filed by or against Borrower any proceedings under any federal or state bankruptcy or insolvency laws, whether the City is a creditor in such proceedings or otherwise.

13. Conflict of Interest; No Individual Liability.

No official or employee of the City shall have any personal interest, direct or indirect, in this Note, nor shall any official or employee of the City participate in any decision relating to this Note which affects such official's or employee's pecuniary interest in any corporation, partnership or association in which such official or employee is directly or indirectly interested. No official or employee of the City shall be personally liable in the event of a breach of this Note by the City.

14. Amendments, Changes and Modifications.

This Note may not be amended, changed, modified, altered or terminated without the prior written consent of the parties hereto.

15. Notices.

Unless otherwise specified in this Note, it shall be sufficient service or giving of any notice, request, certificate, demand or other communication if the same is sent by (and all notices required to be given by mail will be given by) first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery. Unless a different address is given by any party as provided in this Section, all such communications will be addressed as follows:

To Borrower:           Habitat for Humanity Riverside, Inc.  
                              Attn: Kathy Michalak, Executive Director  
                              2180 Iowa Avenue  
                              Riverside, California 92507

To Authority:           City of Riverside  
                              Attn: City Manager  
                              3900 Main Street, Seventh Floor  
                              Riverside, California 92522

Copies to:             City of Riverside  
                              Attn: Community Development Director  
                              3900 Main Street, Third Floor  
                              Riverside, California 92522

                              City of Riverside  
                              Attn: City Attorney  
                              3900 Main Street, Fifth Floor  
                              Riverside, California 92522

16. Severability.

The invalidity or unenforceability of any one or more provisions of this Note will in no way affect any other provisions.

17. Interpretation.

Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the paragraphs of this Note are for convenience only and do not define or limit any terms or provisions. Time is of the essence in the performance of this Note by Borrower. Each party hereto has been represented by counsel in the negotiation of this Note, and it shall not be interpreted in favor of or against any party on account of relative responsibilities in drafting.

Notwithstanding any other provision of this Note, nothing herein or in this Note shall be deemed to require Borrower to pay interest in an amount in excess of any applicable usury law or other legal limitation on interest, and the terms of this Note shall be interpreted to require in each instance the lesser of (a) the amount stated in this Note, and (b) the maximum applicable legal limit.

18. No Waiver; Consents.

Any waiver by the City must be in writing and will not be construed as a continuing waiver. No waiver will be implied from any delay or failure by the City to take action on account of any default of Borrower. Consent by the City to any act or omission by Borrower will not be construed to be a consent to any other or subsequent act or omission or to waive the requirements for the City's consent to be obtained in any future or other instance.

19. Governing Law.

This Note shall be governed by the laws of the State of California.

20. Nonrecourse Obligation.

Notwithstanding anything to the contrary herein or in any document executed by Developer related to the Agreement, except in the event of: (i) Developer's misappropriation or intentional misapplication of monies advanced by the City under this Agreement for purposes other than those authorized herein; or (ii) Developer's fraud or intentional misrepresentation made by Developer in connection with its obligations under this Agreement, the City's sole recourse hereunder and under the Note and any other document executed by Developer in connection with this Note shall be pursuant to the Assignment, and the City shall have no recourse to any assets of Developer other than the Plans, Reports and Data as provided in the Assignment.

21. Approvals.

Except with respect to those matters set forth hereinabove providing for the City's approval, consent or determination to be at the City's "sole discretion" or "sole and absolute discretion," the City hereby agrees to act reasonably with regard to any approval, consent, or other determination given by the City hereunder. The City agrees to give Borrower written notice of its approval or disapproval following submission of items to the City for approval, including, in the case of any disapproved item, the reasons for such disapproval.

Any review or approval of any matter by the City or any City official or employee under this Note shall be solely for the benefit of the City, and neither Borrower nor any other person shall rely upon such review or approval as an indication of the wisdom, soundness, safety, appropriateness, or presence or absence of any matter. Without limiting the generality of the foregoing, Borrower and not the City shall be solely responsible for assuring compliance with laws, the suitability of the Site for the Development, the adequacy of the plans, and the safety of the Development construction site, the completed Development, and the operation thereof.

22. Waiver.

Borrower agrees that it will still be liable for repayment of this Note, even if the holder hereof does not follow the procedures of presentment, protest, demand, diligence, notice of dishonor and of nonpayment, which requirements are hereby waived by the Borrower. Failure of the City or other holder hereof to exercise any right or remedy hereunder shall not constitute a waiver of any future or other default. No acceptance of a past due installment or indulgence granted from time to time shall be construed to be a waiver of, or to preclude the exercise of, the right to insist upon prompt payment thereafter or to impose late charges retroactively or prospectively, or to waive or preclude the exercise of any other rights which the City may have.

IN WITNESS WHEREOF, Borrower has executed this Note as of the date and year first above written.

**“BORROWER”**

HABITAT FOR HUMANITY RIVERSIDE, INC.,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



**EXHIBIT "A"**

**DISBURSEMENT RECORD**

	<b>Disbursement Amount</b>	<b>Disbursement Date</b>	<b>Borrower's Acknowledgment of Receipt</b>
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			



acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, the Property;

**TOGETHER WITH** any and all buildings and improvements now or hereafter erected on the Property including, without limitation, Trustor's interest in fixtures, tenements, attachments, appliances, equipment, building systems, machinery, and other articles now or hereafter attached to the buildings and improvements (collectively, the "Improvements"), all of which shall be deemed and construed to be a part of the real property;

**TOGETHER WITH** all earnings, rents, issues, profits, revenue, royalties, income, proceeds and other benefits, including without limitation prepaid rents and security deposits (collectively, the "Rents") derived from any lease, sublease, license, franchise or concession or other agreement (collectively, the "Leases") now or hereafter affecting all or any portion of the Property or the Improvements or the use or occupancy thereof;

**TOGETHER WITH** all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Property or the Improvements, including without limitation, all right, title and interest now owned or hereafter acquired by Trustor in and to any greater estate in the Property or the Improvements;

**TOGETHER WITH** all easements, tenements, hereditaments, appurtenances, rights-of-way and rights now owned or hereafter acquired by Trustor used or useful in connection with the Property or as a means of access thereto, including, without limiting the generality of the foregoing, all rights pursuant to any trackage agreement and all rights to the nonexclusive use of common drive entries, all oil and gas and other hydrocarbons and all other minerals and water and water rights and shares of stock evidencing the same;

**TOGETHER WITH** all leasehold estate, right, title and interest of Trustor in and to all leases, subleases, subtenancies, licenses, franchises, occupancy agreements and other agreements covering the Property, the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder, including, without limitation, all cash or security deposits, prepaid or advance rentals, and deposits or payments of similar nature;

**TOGETHER WITH** all right, title and interest of Trustor, now owned or hereafter acquired in and to any Property lying within the right-of-way of any street, open or proposed, adjoining the Property and any and all sidewalks, vaults, alloys and strips and gores of property adjacent to or used in connection with the Property;

**TOGETHER WITH** all the estate, interest, right, title, other claim or demand, both in law and in equity, including claims or demands with respect to the proceeds of insurance in effect with respect to the Property, which Trustor now has or may hereafter acquire in the Property or the Improvements and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the interests described

in this Deed of Trust, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

The entire estate, property and interest hereby conveyed to Trustee may hereafter be collectively referred to as the "Trust Estate".

**FOR THE PURPOSE OF SECURING:**

(a) the payment of the sum of One Hundred Fifty Thousand Dollars (\$150,000), or so much of such principal as may be disbursed pursuant to the Note, with a zero percent (0.0%) interest for the period of time commencing on the date on which the Predevelopment Loan proceeds are first disbursed for the account of Borrower and according to the terms of the Note, and any and all additions, modifications or extensions thereof;

(b) performance of every obligation, covenant and agreement of Trustor contained in the Agreement, the Note, and that certain Declaration by and between Trustor and Beneficiary dated and recorded concurrently herewith (the "Declaration") which includes among other covenants and restrictions, covenants of affordability, maintenance of the Project and restrictions on transfer of ownership of the Project and all modifications, extensions, renewals, and replacements thereof or any other agreement now or hereafter executed by Trustor which recites that the obligations thereunder are secured by this Deed of Trust and the Notice of Default (collectively, the "Loan Documents");

(c) payment of all sums advanced by Beneficiary or its successors and assigns, or Trustee, to enforce the Note, the Agreement, the Declaration or this Deed of Trust to protect the Trust Estate upon an Event of Default, with interest thereon at the rate of ten percent (10%) per annum (the "Default Rate") pursuant to the terms of the Note;

(d) payment and performance of all other obligations of Trustor arising from any and all existing and future agreements with Beneficiary, or its successors or assigns, when such agreement recites that the obligations thereunder are secured by this Deed of Trust.

All initially capitalized terms used herein which are defined in the Agreement shall have the same meaning herein unless the context otherwise requires.

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:**

**ARTICLE 1.**

**COVENANTS AND AGREEMENTS OF TRUSTOR**

**1.1 Payment of Secured Obligations.** Trustor shall immediately pay when due all amounts secured hereby.

**1.2 Maintenance, Repair, Alterations.** Subject to normal wear and tear, Trustor (a) shall keep the Property and the Improvements thereon in good condition and repair in accordance with the Loan Documents, including without limitation the Declaration; (b) shall not remove, demolish or substantially alter any of the Improvements except upon the prior written consent of Beneficiary; (c) shall complete promptly and in a good and workmanlike manner any Improvement which may be now or hereafter constructed on the Property and promptly restore in like manner any portion of the Improvements which may be damaged or destroyed thereon from any cause whatsoever, and pay when due all claims for labor performed and materials furnished therefore; (d) shall comply in all material respects with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Trust Estate or any part thereof or requiring any alterations or improvements; (e) shall not commit or permit any waste or deterioration of the Property or the Improvements; (f) shall not allow changes in the use for which all or any part of the Property or the Improvements were intended; and (g) shall not initiate or acquiesce in a change in the zoning classification of the Property and the Improvements without Beneficiary's prior written consent.

**1.3 Required Insurance.**

(a) Trustor shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force, at no expense to Trustee or Beneficiary, policies of insurance in accordance with the terms of the Loan Documents in form and amounts, providing for deductibles, and issued by companies, associations or organizations covering such casualties, risks, perils, liabilities and other hazards as required by the Loan Documents or by Beneficiary pursuant thereto.

(b) Trustor shall not obtain separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Beneficiary is included thereon under a standard, non-contributory mortgagee clause or endorsement acceptable to Beneficiary. Trustor shall immediately notify Beneficiary whenever any such separate insurance is obtained and shall promptly deliver to Beneficiary the original policy or policies of such insurance.

(c) Within 90 days following the end of each fiscal year of Trustor, at the request of Beneficiary, Trustor at Trustor's expense shall furnish such evidence of replacement costs as the insurance carrier providing casualty insurance for the building(s) and other improvements on the Property may require to determine, or which such carrier may provide in determining, the then replacement cost of the building(s) and other improvements on the Property.

**1.4 Delivery of Policies, Payment of Premiums.**

(a) At Beneficiary's option Trustor shall furnish Beneficiary with a copy of all policies of insurance required under Section 1.3 above or evidence of insurance issued by the applicable insurance company for each required policy setting forth the coverage, the limits of

liability, the name of the carrier, the policy number and the period of coverage, and otherwise in form and substance satisfactory to Beneficiary in all respects.

(b) In the event Trustor fails to provide, maintain, keep in force or deliver to Beneficiary the policies of insurance required by this Deed of Trust or by any Loan Documents, Beneficiary may (but shall have no obligation to) procure such insurance or single-interest insurance for such risks covering Beneficiary's interest and Trustor will pay all premiums thereon and reimburse Beneficiary for all amounts paid or incurred by it in connection therewith promptly upon demand by Beneficiary and, until such payment and reimbursement is made by Trustor, the amount of all such premiums and amounts paid or incurred by Beneficiary shall become indebtedness secured by this Deed of Trust and bear interest at the Default Rate. Following an Event of Default for failure to maintain insurance in accordance with this Section 1.4 and upon written request by Beneficiary, Trustor shall deposit with Beneficiary in monthly installments, an amount equal to 1/12 of the estimated aggregate annual insurance premiums on all policies of insurance required by the Loan Documents or this Deed of Trust. In such event Trustor further agrees to cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents evidencing that a premium for a required policy is then payable, and providing Trustor has deposited sufficient funds with Beneficiary pursuant to this Section 1.4, Beneficiary shall timely pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may be then or subsequently due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of the funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section 1.4, nor shall anything contained herein modify the obligation of Trustor set forth in Section 1.3 hereof to maintain and keep such insurance in force at all times. Beneficiary may commingle the reserve with its own funds and Trustor shall be entitled to no interest thereon.

**1.5 Casualties; Insurance Proceeds.** Trustor shall give prompt written notice thereof to Beneficiary after the happening of any casualty to or in connection with the Property, the Improvements, or any part thereof, whether or not covered by insurance subject to the provisions of any senior liens, in the event of such casualty, all proceeds of insurance shall be payable to Beneficiary, whether required by the Loan Documents or otherwise, and Trustor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Beneficiary. If Trustor receives any proceeds of insurance resulting from such casualty, whether required by the Loan Documents or otherwise, Trustor shall promptly pay over such proceeds to Beneficiary, except where the insurance proceeds for such casualty are less than \$50,000. Beneficiary is hereby authorized and is empowered by Trustor to settle, adjust or compromise any and all claims for loss, damage or destruction under any policy or policies of insurance. In the event of any damage or destruction of the Property or the Improvements, Beneficiary shall apply all loss proceeds remaining after deduction of all expenses of collection and settlement thereof, including, without limitation, fees and expenses of attorneys and adjustors, to the restoration of the Improvements, but only as repairs or replacements are effected

and continuing expenses become due and payable and provided all applicable conditions specified in the Loan Documents with respect thereto have been satisfied. If any one or more of such conditions in the Loan Documents has not been met, Beneficiary shall not be obligated to make any further disbursements pursuant to the Note and Beneficiary shall apply all loss proceeds, after deductions as herein provided, to the repayment of any indebtedness thereunder, together with all accrued interest thereon, notwithstanding that the outstanding balance may not be due and payable and the Agreement shall terminate. Nothing herein contained shall be deemed to excuse Trustor from repairing or maintaining the Property and the Improvements as provided in Section 1.2 hereof or restoring all damage or destruction to the Property or the Improvements, regardless of whether or not there are insurance proceeds available to Trustor or whether any such proceeds are sufficient in amount, and the application or release by Beneficiary of any insurance proceeds shall not cure or waive any Event of Default nor any notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

**1.6 Intentionally omitted.**

**1.7 Indemnification; Subrogation; Waiver of Offset.**

(a) If Beneficiary is made a party to any litigation concerning this Deed of Trust or any of the Loan Documents, the Trust Estate or any part thereof or interest therein, or the occupancy of the Property or the Improvements by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless from all liability by reason of that litigation, including reasonable attorneys' fees and expenses incurred by Beneficiary as a result of any such litigation, whether or not any such litigation is prosecuted to judgment, except to the extent that such liability is caused by the sole negligence or willful misconduct of Beneficiary. Beneficiary may employ an attorney or attorneys selected by it to protect its rights hereunder, and Trustor shall pay to Beneficiary reasonable attorneys' fees and costs incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of its breach.

(b) Trustor waives any and all right to claim or recover against Trustee, Beneficiary, and their respective officers, employees, agents and representatives, for loss of or damage to Trustor, the Trust Estate, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

(c) All sums payable by Trustor in accordance with the terms of this Deed of Trust, the Note or the Agreement shall be paid upon notice and demand and without counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like

proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary, which does not relate to the Predevelopment Loan; or (vi) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein and subject to any limitation thereon provided by law, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor.

### **1.8 Taxes and Impositions.**

(a) As used herein, "Impositions" shall mean all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including, without limitation, nongovernmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Trust Estate, which are assessed or imposed upon the Trust Estate or any portion of it, or become due and payable, and which create, may create or appear to create a lien upon the Trust Estate, or any part thereof, or upon any person, property, equipment or other facility used in the operation or maintenance thereof, or any tax or assessment on the Trust Estate, or any part of it, in lieu thereof or in addition thereto, or any license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby. Trustor shall pay all Impositions prior to delinquency. Trustor shall deliver to Beneficiary proof of the payment of the Impositions within thirty (30) days after such Impositions are due.

(b) After an Event of Default by Trustor and upon written request by Beneficiary, Trustor shall pay to Beneficiary, unless the Property and Improvements have received an ad valorem property tax exemption pursuant to subdivision (f) or (g) of Section 214 of the California Revenue and Taxation Code, an initial cash reserve in an amount adequate to pay all Impositions for the ensuing tax fiscal year and shall thereafter continue to deposit with Beneficiary, in monthly installments, an amount equal to 1/12 of the sum of the annual Impositions reasonably estimated by Beneficiary, for the purpose of paying the installment of Impositions next due on the Property and the Improvements (funds deposited for this purpose shall hereinafter be referred to as "Impounds"). In such event Trustor further agrees to cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents, and providing Trustor has deposited sufficient Impounds with Beneficiary pursuant to this Section 1.8(b), Beneficiary shall timely pay such amounts as may be due thereunder out of the Impounds so deposited with Beneficiary. If at any time and for any reason the Impounds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary may notify Trustor and upon such notice Trustor shall deposit immediately an amount equal to such deficiency with Beneficiary. If after the payment of the Impositions there shall be an excess amount held by Beneficiary, such excess amount shall be refunded to Trustor in any manner and in such amount as Beneficiary may elect. Beneficiary may commingle Impounds with its own funds and shall not be obligated to pay or allow any interest on any Impounds held by



Beneficiary pending disbursement or application hereunder. Beneficiary may reserve for future payment of Impositions such portion of the Impounds as Beneficiary may in its absolute discretion deem proper.

(c) Upon an Event of Default under any of the Loan Documents or this Deed of Trust, Beneficiary may apply the balance of the Impounds upon any indebtedness or obligation secured hereby in such order as Beneficiary may determine, notwithstanding that the indebtedness or the performance of the obligation may not yet be due according to the terms thereof. Should Trustor fail to deposit with Beneficiary (exclusive of that portion of the payments which has been applied by Beneficiary upon any indebtedness or obligation secured hereby) sums sufficient to fully pay such Impositions before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall bear interest at the Default Rate, shall be secured hereby and shall be repayable to Beneficiary as herein elsewhere provided, or at the option of Beneficiary the latter may, without making any advance whatever, apply any Impounds held by it upon any indebtedness or obligation secured hereby in such order as Beneficiary may determine, notwithstanding that the indebtedness or the performance of the obligation may not yet be due according to the terms thereof. Should any Event of Default occur or exist on the part of the Trustor in the payment or performance of any of Trustor's obligations under the terms of the Loan Documents, Beneficiary may, at any time at Beneficiary's option, apply any sums or amounts in its possession received pursuant to Sections 1.4(b) and 1.8(b) hereof, or as Rents of the Property or the Improvements, or any portion thereof, or otherwise, to any indebtedness or obligation of the Trustor secured hereby in such manner and order as Beneficiary may elect, notwithstanding the indebtedness or the performance of the obligation may not yet be due according to the terms thereof. The receipt, use or application of any such Impounds paid by Trustor to Beneficiary hereunder shall not be construed to affect the maturity of any indebtedness secured by this Deed of Trust or any of the rights or powers of Beneficiary or Trustee under the terms of the Loan Documents or any of the obligations of Trustor or any guarantor under the Loan Documents.

(d) Trustor shall not suffer, permit or initiate the joint assessment of any real and personal property which may constitute any portion of the Trust Estate or suffer, permit or initiate any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Trust Estate, or any portion of it, as a single lien.

(e) If requested by Beneficiary, Trustor shall cause to be furnished to Beneficiary a tax reporting service covering the Property and the Improvements of the type, duration and with a company satisfactory to Beneficiary.

(f) If, by the laws of the United States of America, or of the State of California or any political subdivision thereof having jurisdiction over Trustor, Beneficiary or the Trust Estate or any portion thereof, any tax, assessment or other payment is due or becomes due in respect of the issuance of the Note or the recording of this Deed of Trust, Trustor covenants and agrees to pay each such tax, assessment or other payment in the manner required

by any such law. Trustor further covenants to defend and hold harmless and agrees to indemnify Beneficiary, its successors or assigns, against any liability incurred by reason of the imposition of any tax, assessment or other payment on the issuance of the Note or the recording of this Deed of Trust.

**1.9 Utilities.** Trustor shall pay or shall cause to be paid when due all utility charges which are incurred by Trustor for the benefit of the Property or the Improvements and all other assessments or charges of a similar nature, whether or not such charges are or may become liens thereon.

**1.10 Actions Affecting Trust Estate.** Trustor shall promptly give Beneficiary written notice of and shall appear in and contest any action or proceeding purporting to affect any portion of the Trust Estate or the security hereof or the rights or powers of Beneficiary or Trustee; and shall pay all costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear.

**1.11 Actions By Trustee or Beneficiary to Preserve Trust Estate.** During the continuation of an event of default, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do, without releasing Trustor from any obligation, and without notice to or demand upon Trustor, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting their general powers, whether conferred herein, in any other Loan Documents or by law), Beneficiary and Trustee shall have and are hereby given the right, but not the obligation, (a) to enter upon and take possession of the Property and the Improvements; (b) to make additions, alterations, repairs and improvements to the Property and the Improvements which they or either of them may consider necessary or proper to keep the Property or the Improvements in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (d) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect or appears to affect the security of this Deed of Trust or be prior or superior hereto; and (e) in exercising such powers, to pay necessary expenses, including reasonable attorneys' fees and costs or other necessary or desirable consultants. Trustor shall, immediately upon demand therefor by Beneficiary and Trustee or either of them, pay to Beneficiary and Trustee an amount equal to all respective costs and expenses incurred by such party in connection with the exercise of the foregoing rights, including, without limitation, reasonable costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees, together with interest thereon from the date of such expenditures at the Default Rate.

**1.12 Transfer of Trust Estate by Trustor.** Subject to the provisions of the Agreement, in the event the Trust Estate or any part thereof, or any interest therein is sold, transferred or leased in violation of Section 2 of the Agreement, Beneficiary shall have the absolute right at its option, upon notice and demand in accordance with Section 9 of the Agreement, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or

successive transactions. As a condition of the Predevelopment Loan, Trustor agrees for itself, its successors and assigns that the use of the Property shall be subject to the restrictions on rent and occupancy and use of the Property set forth in the Loan Documents, including without limitation, the Declaration.

**1.13 Survival of Warranties.** All representations, warranties and covenants of Trustor contained in the Loan Documents or incorporated by reference therein, shall survive the execution and delivery of this Deed of Trust and shall remain continuing obligations, warranties and representations of Trustor so long as any portion of the obligations secured by this Deed of Trust remains outstanding.

**1.14 Eminent Domain.**

(a) Subject to the provisions of any senior liens, in the event that any proceeding or action be commenced for the taking of the Trust Estate, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation or otherwise, or if the same be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Trustor receive any notice or other information regarding such proceeding, action, taking or damage, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary shall be entitled at its option, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name any such action or proceeding so long as the probable compensation exceeds \$50,000. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, damages, rights of action and proceeds awarded to Trustor by reason of any such taking or damage (the "Condemnation Proceeds") are hereby assigned to Beneficiary and Trustor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary or Trustee may require. After deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including reasonable attorneys' fees, incurred by it in connection with any such action or proceeding, subject to any applicable terms of the Agreement, Beneficiary shall apply all such Condemnation Proceeds to the restoration of the Improvements, provided that (i) the taking or damage will not, in Beneficiary's reasonable judgment, materially and adversely affect the contemplated use and operation of Property and the Improvements; and (ii) all applicable conditions set forth in the Agreement are met. If all of the above conditions are met, Beneficiary shall disburse the Condemnation Proceeds only as repairs or replacements are effected and continuing expenses become due and payable.

(b) If any one or more of such conditions is not met, Beneficiary shall apply all of the Condemnation Proceeds, after deductions as herein provided, to the repayment of the outstanding balance of the Note, together with all accrued interest thereon, notwithstanding that the outstanding balance may not be due and payable; and Beneficiary shall have no further obligation to make disbursements pursuant to the Agreement or the other Loan Documents. If the Condemnation Proceeds are not sufficient to repay the Note in full, Trustor shall have no obligation to pay any remaining balance. Application or release of the Condemnation Proceeds

as provided herein shall not cure or waive any Event of Default or notice of default hereunder or under any other City document or invalidate any act done pursuant to such notice.

**1.15 Additional Security.** No other security now existing, or hereafter taken, to secure the obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust and all additional security shall be taken, considered and held as cumulative. The taking of additional security, execution of partial releases of the security, or any extension of the time of payment of the indebtedness shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any Trustor, surety or endorser for the payment of the indebtedness. In the event Beneficiary at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently, or after a sale is made hereunder.

**1.16 Successors and Assigns.** This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not named as Beneficiary herein. In exercising any rights hereunder or taking any actions provided for herein, Beneficiary may act through its employees, agents or independent contractors authorized by Beneficiary.

**1.17 Inspections.** Beneficiary, or its agents, representatives or employees, are authorized to enter upon or in any part of the Property and the Improvements at any reasonable time following reasonable written notice of no less than 48 hours in advance thereof for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform hereunder or under the terms of any of the Loan Documents. Without limiting the generality of the foregoing, Trustor agrees that Beneficiary will have the same right, power and authority to enter and inspect the Property and the Improvements as is granted to a secured lender under Section 2929.5 of the California Civil Code, and that Beneficiary will have the right to appoint a receiver to enforce this right to enter and inspect the Property and the Improvements to the extent such authority is provided under California law, including the authority given to a secured lender under Section 564(c) of the California Code of Civil Procedure.

**1.18 Liens.** Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Trust Estate, or any part thereof or interest therein, subject to Trustor's right to contest in good faith any such liens, encumbrances and charges. The Trustor shall remove or have removed any levy or attachment made on any of the Property or any part thereof, or assure the satisfaction thereof within a reasonable time. Despite the foregoing, Trustor shall not be required to prepay any consensual lien or encumbrance against the Trust Estate which has been consented to in writing by Beneficiary. If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien, encumbrance or charge by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Trustor shall, immediately upon demand therefor by Beneficiary, pay to

Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, together with interest thereon from the date of such expenditure at the Default Rate.

**1.19 Trustee's Powers.** At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Trust Estate, Trustee may (a) reconvey any part of the Trust Estate, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

**1.20 Beneficiary's Powers.** Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Estate not then or theretofore released as security for the full amount of all unpaid obligations, Beneficiary may, from time to time and without notice (a) release any person so liable, (b) extend the maturity or alter any of the terms of any such obligation, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel, portion or all of the Trust Estate, (e) take or release any other or additional security for any obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

**1.21 Personal Liability.** The security interest in the Property granted to Beneficiary pursuant to this Deed of Trust shall be subordinate only to the senior financing to which Beneficiary has expressly subordinated and such exceptions to title shown in the title report for the Property which are approved in writing by Beneficiary. Neither the Trustor nor any partner or officer of the Trustor shall have any direct or indirect personal liability for payment of the principal of, or interest on, the Note. The Note constitutes a recourse obligation of Trustor until recordation of the Release of Construction Covenants in the official records of the County of Riverside, California.

Subsequent to the recordation of the Release of Construction Covenants in the official records of the County of Riverside, California, the sole recourse of the Beneficiary with respect to the principal of, or interest on, the Note shall be to the Property securing the indebtedness evidenced by the Note. No judgment, or execution thereon, entered in any action, legal or equitable, on the Note or this Deed of Trust securing the Note shall be enforced personally against the Trustor or, if the Trustor shall be a partnership, any partner of the Trustor, but shall be enforced only against the Trustor and such other or further security as, from time to time, may be hypothecated for the Note; provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the Beneficiary, or (b) be deemed in any way to impair the right of the Beneficiary to assert the unpaid principal amount of the Promissory Note as a demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is

intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Promissory Note; nothing contained therein is intended to relieve the Trustor and, if Trustor is a partnership, any general partner of Trustor of liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the real property described in the Loan Documents that are payable or applicable prior to any foreclosure under this Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the retention of any rental income or other income arising with respect to the Project collected by Trustor after the Beneficiary has given any notice that Trustor is in default to the full extent of the rental income or other income retained and collected by Trustor after the giving of any such notice; (iv) the fair market value as of the time of the giving of any notice referred to in subparagraph (iii) above of any personal property or fixtures removed or disposed of by Trustor other than in accordance with the Loan Documents after the giving of any notice referred to above; and (v) the misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Project; and (vi) breach of any environmental covenant or representation made by the Trustor relating to the Project.

**1.22 Indemnity.** In addition to any other indemnities to Beneficiary specifically provided for in this Deed of Trust and/or in the Agreement, Trustor hereby indemnifies, and shall defend and save harmless, Beneficiary and its authorized representatives from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, architects', engineers' and attorneys' fees and all disbursements which may be imposed upon, incurred by or asserted against Beneficiary and its authorized representative by reason of: (a) the construction of any improvements on the Property, (b) any capital improvements, other work or things done in, on or about the Property or any part thereof, (c) any use, nonuse, misuse, possession, occupation, alteration, operation, maintenance or management of any portion of the Trust Estate or any part thereof or any street, drive, sidewalk, curb, passageway or space comprising a part thereof or adjacent thereto, (d) any negligence or willful act or omission on the part of Trustor and its agents, contractors, servants, employees, licensees or invitees, (e) any accident, injury (including death) or damage to any person or property occurring in, on or about the Property or any part thereof, (f) any lien or claim which may be alleged to have arisen on, against, or with respect to any portion of the Trust Estate under the laws of the local or state government or any other governmental or quasi-governmental authority or any liability asserted against Beneficiary with respect thereto, (g) any tax attributable to the execution, delivery, filing or recording of this Deed of Trust, the Note or the Agreement, (h) any contest due to Trustor's actions or failure to act, permitted pursuant to the provisions of this Deed of Trust, (i) subject to the nonrecourse provisions set forth in Section 1.21, any Event of Default under the Note, the Declaration, this Deed of Trust or the Agreement, or (j) any claim by or liability to any contractor or subcontractor performing work or any party supplying materials in connection with the Property or the Improvements, except to the extent caused by the Beneficiary's sole negligence or willful misconduct.

## **ARTICLE 2**

### **ASSIGNMENT OF RENTS, ISSUES AND PROFITS**

**2.1 Assignment.** Trustor hereby irrevocably, absolutely, presently and unconditionally assigns and transfers to Beneficiary all the Rents of or from any portion of the Trust Estate, and hereby gives to and confers upon Beneficiary the right, power and authority to collect such Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor, Trustee or Beneficiary, for all such Rents, and apply the same to the indebtedness secured hereby; provided, however, that so long as an Event of Default shall not have occurred hereunder and be continuing, Trustor shall have the right to collect such Rents. Upon the request of Beneficiary, Trustor shall execute and deliver to Beneficiary, in recordable form, a specific assignment of any leases now or hereafter affecting the Trust Estate or any portion thereof to evidence further the assignment hereby made. The Assignment of Rents in this Article 2 is intended to be an absolute assignment from Trustor to Beneficiary and not merely an assignment for security only.

**2.2 Election of Remedies.** Subject to Trustor's right to collect the Rents pursuant to Section 2.1, Beneficiary may, either in person, by agent or by a receiver appointed by a court, enter upon and take possession of all or any portion of the Property and the Improvements, enforce all Leases, in its own name sue for or collect all Rents, including those past due and unpaid, and apply the same to the costs and expenses of operation and collection, including, without limitation, attorneys' fees, and to any indebtedness then secured hereby, in such order as Beneficiary may determine. The collection of such Rents, or the entering upon and taking possession of the Property or the Improvements, or the application thereof as provided above, shall not cure or waive any Event of Default or notice of default hereunder or under any of the Loan Documents or invalidate any act done in response to such Event of Default or pursuant to such notice of default.

## **ARTICLE 3**

### **REMEDIES UPON DEFAULT**

**3.1 Events of Default.** For all purposes hereof, the term "Event of Default" shall mean (a) at Beneficiary's option, the failure of Trustor to pay any amount due hereunder or under the Note when the same is due and payable, whether by acceleration or otherwise; (b) the failure of Trustor to perform any non-monetary obligation hereunder, or the failure to be true in any material respect when made of any representation or warranty of Trustor contained herein, without curing such failure within ten (10) days after receipt of written notice from the City (or from any party authorized by the City to deliver such notice as identified by the City in writing to Borrower), and the continuance of such failure for thirty (30) days after notice, provided that such default cannot reasonably be cured within thirty (30) days, Trustor shall have such additionally time as may be reasonably necessary if Trustor commences to cure such default within such thirty (30) day period and thereafter diligently prosecutes such cure to completion, or (c) the existence of any Event of Default under the Loan Documents.



**3.2 Acceleration Upon Default, Additional Remedies.** Upon the occurrence of an Event of Default, Beneficiary may, at its option, declare all indebtedness secured hereby to be immediately due and payable upon notice and demand. Thereafter Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property and the Improvements, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of any portion of the Trust Estate, including, without limitation (i) taking possession of Trustor's books and records with respect to the Property and Improvements, (ii) completing the construction of the Improvements, (iii) maintaining or repairing the Improvements or any other portion of the Trust Estate, (iv) increasing the income from the Trust Estate, with or without taking possession of the Property or the Improvements, (v) entering into, modifying, or enforcing Leases, (vi) suing for or otherwise collecting the Rents or other amounts owing to Trustor, including those past due and unpaid, and (vii) applying the same, less costs and expenses of operation and collection including, without limitation, attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Property or the Improvements, the collection of such Rents and the application thereof as provided above, shall not cure or waive any Event of Default under the Loan Documents or this Deed of Trust or notice of default hereunder;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale and a written notice of default and election to cause Trustor's interest in the Trust Estate to be sold, which notice Trustee or Beneficiary shall cause to be duly filed of record in the Official Records of the county in which the Property is located; or

(d) Exercise all other rights and remedies provided herein, in any of the Loan Documents or other document now or hereafter securing all or any portion of the obligations secured hereby, or by law.

**3.3 Foreclosure by Power of Sale.** Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Beneficiary or Trustee shall give such notice of default and election to sell as is then required by applicable law. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in the notice of sale, either as a whole, or in separate lots or parcels or items as Beneficiary shall deem expedient, and in such order as it may determine, at public auction to the



highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof a trustee's deed conveying the property so sold, which shall not contain any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Beneficiary shall be entitled to pay the purchase price by crediting the purchase price of the property against the obligations secured hereby. Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all costs, fees and expenses of Trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale in the following priority, to payment of: (i) first, all sums expended under the terms hereof, not then repaid, with accrued interest at the Default Rate; (ii) second, all other sums then secured hereby; and (iii) the remainder, if any, to the person or persons legally entitled thereto.

(c) Subject to California Civil Code ' 2924g, Trustee may postpone sale of all or any portion of the Trust Estate by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

**3.4 Appointment of Receiver.** Upon the occurrence of an Event of Default hereunder, Beneficiary, as a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Trust Estate or the adequacy for any security for the obligations then secured hereby, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein.

**3.5 Remedies Not Exclusive.** Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter

existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies.

**3.6 Request for Notice.** Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in Section 4.3 of this Deed of Trust.

**3.7 Forbearance by Lender Not a Waiver.** Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Beneficiary of payment of any sum secured by this Deed of Trust after the due date of such payment shall not be a waiver of Beneficiary's right either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to make prompt payment. The procurement of insurance or this payment of taxes or other liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the indebtedness secured by this Deed of Trust nor shall Beneficiary's receipt of any awards, proceeds or damages under this Deed of Trust operate to cure or waive any Event of Default with respect to any payment secured by this Deed of Trust.

**3.8 Environmental Provisions.** Without limiting any of the remedies provided in the Loan Documents, Trustor acknowledges and agrees that portions of Section 4 of the Agreement and Section 1.2 of this Deed of Trust are environmental provisions (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by the Trustor relating to the real property security (the "Environmental Provisions"), and that Trustor's failure to comply with the Environmental Provisions is a breach of contract such that Beneficiary shall have the remedies provided under Section 736 of the California Code of Civil Procedure ("Section 736") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure. Other than the remedy provided under Section 736, all remedies provided for by the Loan Documents are separate and distinct causes of action that are not abrogated, modified, limited or otherwise affected by the remedies provided under Section 736(a) of the California Code of Civil Procedure.

#### **ARTICLE 4. MISCELLANEOUS**

**4.1 Amendments.** This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

**4.2 Trustor Waiver of Rights.** Trustor waives to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Trust Estate, (b) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created, (c) all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties, (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Agreement or any other obligation secured by this Deed of Trust, and (e) any rights, legal or equitable, to require marshalling of assets or to require upon foreclosure sales in a particular order, including any rights under California Civil Code Sections 2899 and 3433. Beneficiary shall have the right to determine the order in which any or all of the Trust Estate shall be subjected to the remedies provided herein. Beneficiary shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Nothing contained herein shall be deemed to be a waiver of Trustor's rights under Section 2924c of the California Civil Code.

**4.3 Notices.** All notices and demands given under the terms hereof shall be in writing and sent by first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery. Unless a different address is given by any party as provided in this Section, all such communication will be addressed as follows:

To Trustor:                   Habitat for Humanity Riverside, Inc.  
Attn: Kathy Michalak, Executive Director  
2180 Iowa Ave  
Riverside, California 92507

To Beneficiary:           City of Riverside  
Attn: City Manager  
3900 Main Street, Third Floor  
Riverside, California 92522

Copies to:                   City of Riverside  
Attn: Community Development Director  
3900 Main Street, Third Floor  
Riverside, California 92522

City of Riverside  
Attn: City Attorney  
3900 Main Street, Fifth Floor  
Riverside, California 92522

Any Notice shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or

certified mail. Each party shall promptly notify the other party of any change(s) of address to which notice shall be sent. Any address for service of notice on any party may be changed by that party serving a notice upon the other of the new address, except that any change of address to a post office box shall not be effective unless a street address is also specified for use in effectuating personal service.

**4.4 Acceptance by Trustee.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

**4.5 Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

**4.6 Invalidity of Certain Provisions.** Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

**4.7 Subrogation.** To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether the liens, charges or encumbrances are released.

**4.8 Attorneys' Fees.** If any payment secured hereby is not paid when due, Trustor promises to pay all costs of enforcement and collection, including but not limited to, reasonable attorneys' fees, whether or not such enforcement and collection includes the filing of a lawsuit. As used herein, the terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto (including, without limitation, in-house counsel employed by Beneficiary) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

**4.9 No Merger of Lease.** If both the lessor's and lessee's estate under any lease or any portion thereof which now or hereafter constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing

and affecting all or any portion of the Trust Estate shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

**4.10 Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

**4.11 Joint and Several Obligations.** Should this Deed of Trust be signed by more than one party, all obligations herein contained shall be deemed to be the joint and several obligations of each party executing this Deed of Trust. Any married person signing this Deed of Trust agrees that recourse may be had against community assets and against his or her separate property for the satisfaction of all obligations contained herein.

**4.12 Interpretation.** In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

**4.13 Completion of Construction.** This Deed of Trust is a construction deed of trust within the meaning of California Commercial Code Section 9313. For purposes of subdivision (6) of that statute, "completion of construction" shall not be deemed to occur prior to completion of all work, and installation or incorporation into the Improvements of all materials, for which sums secured hereby are disbursed by Beneficiary.

**4.14 Reconveyance by Trustee.** Upon written request of Beneficiary stating that all sums secured hereby have been paid or that all obligations under the Declaration have been satisfied, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto." Such grantee shall pay Trustee a reasonable fee and Trustee's costs incurred in so reconveying the Trust Estate.

**4.15 Counterparts.** This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document, which may be recorded.

**4.16 Nonforeign Entity.** Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code") and Sections 18805, 18815 and 26131, as applicable, of the California Revenue and Taxation Code ("CRTC") provide that a transferee of a U.S. real property interest must withhold tax, in the case of the Code, if the transferor is a foreign person, or if, in the case of the CRTC, the transferor is not a California resident. To inform Beneficiary that the

withholding of tax will not be required in the event of the disposition of the Property or the Improvements, or any portion thereof or interest therein, pursuant to the terms of this Deed of Trust, Trustor hereby certifies, under penalty of perjury, that: (a) Trustor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Code and the regulations promulgated thereunder; and (b) Trustor's U.S. employer identification number 90-1001541; and (c) Trustor's principal place of business is 1230 Columbia Street, San Diego, CA 92101. It is understood that Beneficiary may disclose the contents of this certification to the Internal Revenue Service and the California Franchise Tax Board, and that any false statement contained herein could be punished by fine, imprisonment or both. Trustor covenants and agrees to execute such further certificates, which shall be signed under penalty of perjury, as Beneficiary shall reasonably require. The covenant set forth herein shall survive the foreclosure of the lien of this Deed of Trust or acceptance of a deed in lieu thereof.

**4.17 Substitute Trustee.** Beneficiary at any time and from time to time, by instrument in writing, may substitute and appoint a successor Trustee (either corporate or individual) to any Trustee named herein or previously substituted hereunder, which instrument when executed, acknowledged, and recorded in the Official Records of the Office of the Recorder of the county or counties where the Property is located shall be conclusive proof of the proper substitution and appointment of each successor trustee or trustees, who shall then have all the title, powers, duties and rights of the predecessor Trustee, without the necessity of any conveyance from such predecessor. Trustee shall not be obligated to notify any party hereto of pending sale under any other Deed of Trust, or, unless brought by Trustee, or any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party.

**4.18 Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder in the county in which the Property is located with respect to any and all fixtures included within the term "Trust Estate" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

**4.19 Waiver of Jury Trial.** TRUSTOR AND BENEFICIARY EACH HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENTS OR RELATING THERETO OR ARISING FROM THE RELATIONSHIP WHICH IS THE SUBJECT OF THE AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

TRUSTOR ACKNOWLEDGES RECEIPT OF A TRUE COPY OF THIS DEED OF TRUST WITHOUT CHARGE.

TRUSTOR PLEASE NOTE: UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, CALIFORNIA PROCEDURE PERMITS TRUSTEE TO SELL THE TRUST ESTATE AT A SALE HELD WITHOUT SUPERVISION BY ANY COURT AFTER EXPIRATION OF A PERIOD PRESCRIBED BY LAW. UNLESS YOU PROVIDE AN AD-

DRESS FOR THE GIVING OF NOTICE, YOU MAY NOT BE ENTITLED TO NOTICE OF THE COMMENCEMENT OF ANY SALE PROCEEDINGS. BY EXECUTION OF THIS DEED OF TRUST, YOU CONSENT TO SUCH PROCEDURE. BENEFICIARY URGES YOU TO GIVE PROMPT NOTICE OF ANY CHANGE IN YOUR ADDRESS SO THAT YOU MAY RECEIVE PROMPTLY ANY NOTICE GIVEN PURSUANT TO THIS DEED OF TRUST.

**4.20 Request For Notice.** Pursuant to California Government Code Section 27321.4(b) Trustor hereby requests that a copy of any notice of default or notice of sale given under this Deed of Trust be mailed to Trustor at the address for Trustor set forth herein.

**4.21 Reconveyance.** Except upon the Event of Default by Trustor, Beneficiary shall reconvey this Deed of Trust upon termination of the Affordability Period as that term is defined in the Agreement.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, Trustor has executed this Deed of Trust as of the day and year first above written.

**TRUSTOR:**

HABITAT FOR HUMANITY RIVERSIDE, INC.,  
a California nonprofit public benefit corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_



**EXHIBIT “A”**

**LEGAL DESCRIPTION**

[Attached]

EXHIBIT "A"

APN: 234-101-051, 054 & 057  
Fee Simple

That certain real property located in the City of Riverside, County of Riverside, State of California, described as follows:

That portion of Lot 4 in Block 26 of the Village of Arlington, as shown by map recorded in Book 1, Page 62 of Maps, records of San Bernardino County, California, more particularly described as follows:

BEGINNING at a point on the northeasterly line of Myers Street as shown by said map of the Village of Arlington, 150 feet southeasterly from the northwesterly corner of said Lot 4; said point being the northwesterly corner of that certain parcel of land as granted to the City of Riverside, by deed recorded November 10, 1945, in Book 714, Page 100, et seq., of Official Records of Riverside County, California;

THENCE northeasterly along the northwesterly line of said parcel of land granted to the City of Riverside, a distance of 170 feet, more or less, to the southwesterly line of that certain alley, 20 feet in width, as shown by map of Taft Tract, on file in Book 7, Page 15 of Maps, records of Riverside County, California;

THENCE southeasterly along the southwesterly line of said alley, a distance of 210 feet to the southeasterly line of Parcel No. 2 of those certain parcels of land conveyed to Mildred I. Kelley, by Grant Deed recorded July 31, 1941, in Book 512, Page 158 of Official Records of Riverside County, California;

THENCE southwesterly along said southeasterly line, a distance of 170 feet to said northeasterly line of Myers Street as shown by said map of the Village of Arlington;


THENCE northwesterly along said northeasterly line of Myers Street, a distance of 210 feet to the POINT OF BEGINNING;

EXCEPTING THEREFROM that portion of said Lot 4 lying southwesterly of a line that is parallel with and distant 33.00 feet northeasterly, as measured at right angles, from the centerline of Myers Street as shown by Parcel Map 9730, filed in Book 51, Pages 72 and 73 of Parcel Maps, records of said Riverside County;

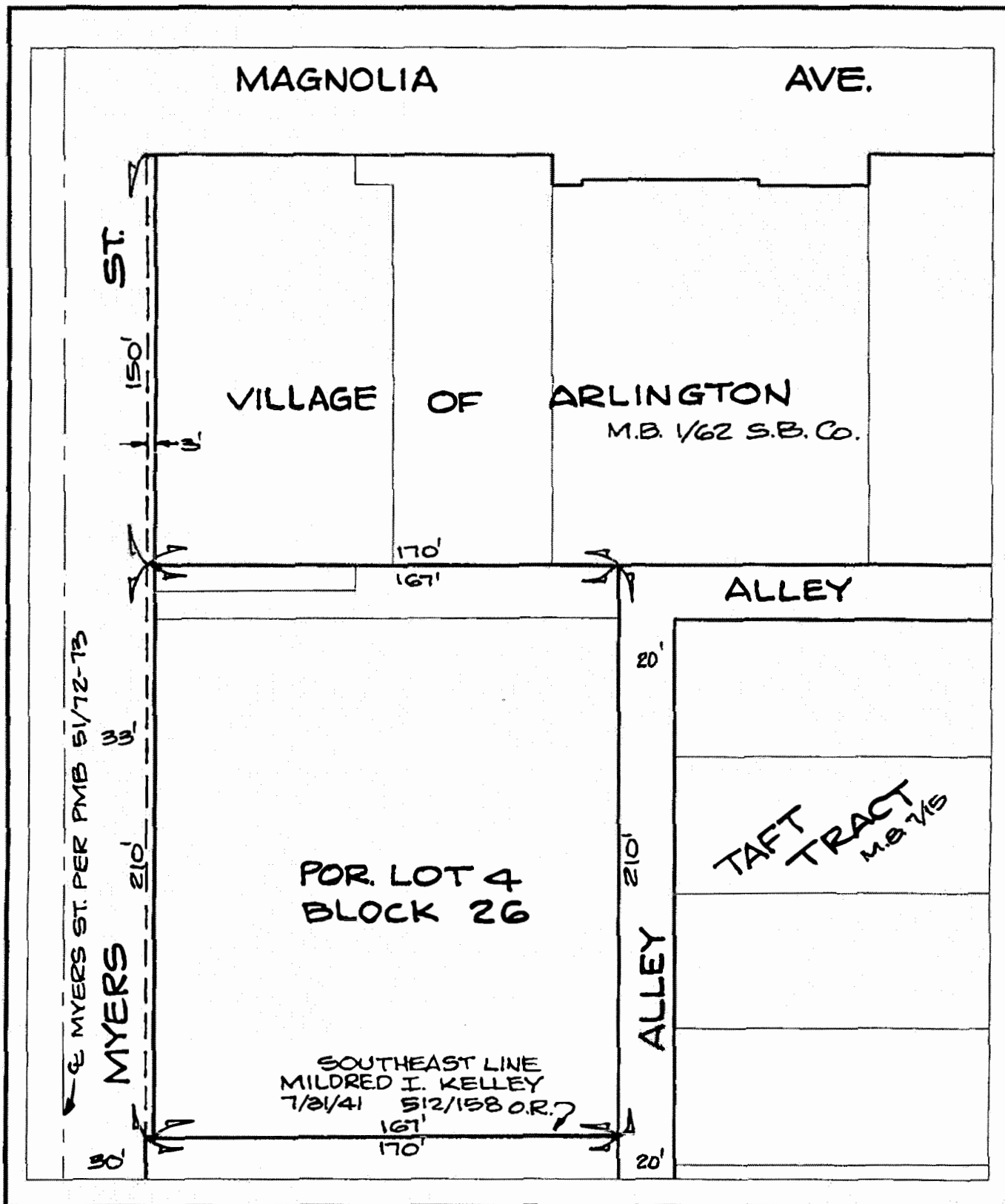
RESERVING THEREFROM permanent easements and rights-of-way for gas line facilities, electric energy distribution facilities, aerial and underground telephone, telegraph and communications facilities as described in Resolution No. 17101 of the City Council of the City of Riverside, a certified copy of said resolution recorded August 24, 1989, as Instrument No. 288815 of Official Records of said Riverside County.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.

  
Curtis C. Stephens, L.S. 7519

5/14/12 Prep.   
Date





◆ **CITY OF RIVERSIDE, CALIFORNIA** ◆

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.

Sheet 1 of 1



Scale: 1" = 50'

Drawn by: sken

Date: 05/11/12

Subject: APN's: 234-101-051, 054 & 057

**ATTACHMENT NO. 7**  
**DECLARATION (HOME)**

**RECORDING REQUESTED BY**

**AND WHEN RECORDED MAIL TO:** )

)  
)  
)  
City of Riverside )  
3900 Main Street )  
Riverside, CA 92522 )  
Attn: Executive Director )  
)  
Project: 3753 Myers St. )

(Space above for Recorder's Use Only)

This document is exempt from the payment of a recording fee  
pursuant to Government Code Section 27383.

**DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS**  
**(WITH AFFORDABLE HOUSING COVENANTS UNDER HOME PROGRAM)**

This **DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS (WITH AFFORDABLE HOUSING COVENANTS UNDER HOME PROGRAM)** (this "**Declaration**") is made as of is entered into the \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the **CITY OF RIVERSIDE**, a California municipal corporation (the "City") and **HABITAT FOR HUMANITY RIVERSIDE, INC.**, a California nonprofit public benefit corporation ("Developer").

**RECITALS**

A. The City and Developer entered into that certain HOME Predevelopment Loan Agreement (the "Agreement"), which is incorporated herein by this reference and copies of which are on file as public record of the City at its offices located at 3900 Main Street, Riverside, California 92522. Pursuant to the Agreement, the City has agreed to convey certain real property owned by the City consisting of a certain parcel located at 3753 Myers Street, in the City of Riverside (the "Site") and the purpose of constructing eleven "for sale" single family housing units (the "Affordable Units") along with other amenities and facilities to low-income families (collectively, the "Project").

B. As a condition to the conveyance of the Site, Developer has agreed to develop the Project in accordance with certain covenants, conditions and restrictions as set forth in this Declaration. This Declaration is intended to ensure that Developer, its successors and assigns, and every successor in interest to the Site or any part thereof, shall develop the Site in accordance with the terms and conditions of this Declaration.

C. The development of the Site pursuant to the terms and conditions of the Agreement this Declaration are in the vital and best interests of the City and the health, safety and welfare of its residents, and are in accord with the public purposes and provisions of applicable state and local laws.

## AGREEMENT

NOW, THEREFORE, the parties hereto agree and covenant as follows:

### **ARTICLE I**

#### AFFORDABLE HOUSING OBLIGATIONS OF DEVELOPER

Section 1. Affordable Units. Developer acknowledges that the purpose of the City's assistance is to encourage homeownership among "low-income families" as defined by 24 CFR 92.2 . Pursuant to such purpose, Developer covenants and agrees to make available and sell at all of the units constructed on the Site consistent with applicable requirements of the Agreement, the HOME Program, including but not limited to 24 CFR 92.254, and this Declaration.

Section 2. Term of Affordability Covenants. Developer covenants and agrees to restrict the sale of the Affordable Units to sale and resale exclusively to homebuyers who are low income families, until such date as is five years from the date of the initial sale of each Affordable Unit by Developer.

Section 3. Owner Occupancy. Developer agrees that the Affordable Units shall be restricted to occupancy by the owners of the Affordable Units in accordance with the Agreement.

Section 4. Developer's Silent Second Financing. Developer agrees that its proposed silent second financing shall provide terms that, upon the original HOME-assisted owner's resale of an Affordable Unit, the silent second financing shall not impede or otherwise conflict with the resale and recapture requirements set forth in 24 CFR 92.254(a)(5), which terms may include reducing the outstanding balance on the silent second loan or such other terms necessary to assure that the Affordable Unit will be available to a reasonable range of low-income homebuyers and the original owner will be affordable a fair return on investment consistent with the HOME Program requirements. Such terms contained in Developer's silent second financing documents shall be subject to the reasonable review and approval of the City prior to the initial sale of any Affordable Unit. This Declaration shall not be subordinate to any deed of trust or other recorded instrument related to Developer's silent second loan.

### **ARTICLE II**

#### **HOME PROGRAM RELATED FEDERAL LAWS AND REGULATIONS**

With respect to the Developer's predevelopment activities undertaken in connection with this Agreement and with respect to activities pursuant to the Disposition and Development Agreement, Developer acknowledges the obligation to comply with the following covenants to the extent applicable:

Section 1. Qualification as Affordable Housing. Developer shall develop the Site in accordance with the requirements of the HOME Program so as to qualify the housing on the Site as affordable housing.

Section 2. Qualifications as to Homeownership. Developer shall comply with the requirements of 24 CFR 92.254.

Section 3. Handicapped Accessibility. If and to the extent applicable, Developer shall comply with (a) Section 504 of the Rehabilitation Act of 1973, and implementing regulation at 24 CFR Part 8C governing accessibility of projects assisted under the HOME Program; and (b) the Americans with Disabilities Act of 1990, and implementing regulations at 28 CFR Parts 35-36 in order to provide handicapped accessibility to the extent readily achievable.

Section 3. Lead-Based Paint. Developer shall comply with the requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and Residential Lead-Based Paint Hazard Reduction Act of 1992 and implementing regulations at 24 CFR Part 35.

Section 4. Affirmative Marketing. Developer shall implement and perform such affirmative marketing procedures and requirements (24 CFR 92.351) for the Development as the City hereafter adopts and delivers to Developer in its Affirmative Fair Housing Marketing Plan.

Section 5. Equal Opportunity and Fair Housing. Developer shall carry out the construction and perform its obligation under this Agreement in compliance with all of the federal laws and regulations regarding equal opportunity and fair housing described in 24 CFR 92.350.

Section 6. Property Standards. Developer shall comply with 24 CFR 92.251.

Section 7. Displacement and Relocation. Developer acknowledges and agrees that, pursuant to 24 CFR 92.253 and consistent with the other goals and objectives of this part, the City must ensure that it has taken all reasonable steps to minimize the displacement of persons as a result of the Development, if any. Furthermore, to the extent applicable and to the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary and affordable dwelling units on the Site upon completion of construction. Developer agrees to cooperate fully and completely with the City in meeting the requirements of 24 CFR 92.253 and shall take all actions and measures reasonable required by the Executive Director in connection therewith.

Section 8. Records and Reports. Developer shall maintain and from time to time submit to the City such records, reports and information as the City Manager may reasonably require in order to permit the City to meet the record keeping and reporting requirements required of it pursuant to 24 CFR 92.508.

Section 9. Labor Standards (Davis-Bacon). In the event that the City Manager determined that the Development will have 12 or more HOME-assisted units, any contract for construction shall contain a Prevailing Wage Clause requiring that not less than the wages

prevailing in the locality, as predetermined by the Secretary of the United States Department of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-5), will be paid to all laborers and mechanics employed in the construction of the Development, and such contract(s) shall also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332). Participating contractors, subcontractors, and other participants must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. The Developer shall supply to the City a certification, in form and substance satisfactory to HUD and the City Manager, as to compliance with the provisions of this section before receiving any disbursement of HOME Funds.

Section 10. Use of Debarred, Suspended, or Ineligible Participants. Developer shall comply with the provisions of 24 CFR 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status.

Section 11. Maintenance of Drug-Free Workplace. Developer shall certify that Developer will provide a drug-free workplace in accordance with 24 CFR Part 24F.

Section 12. Other Program Requirements. Developer shall carry out each activity in compliance with all federal laws and regulations described in subpart H of 24 CFR 92, except that Developer does not assume the City's responsibilities for environmental review as set forth in 24 CFR 92.352 or the intergovernmental review process in 24 CFR 92.357.

Section 13. Requests for Disbursements of Funds. Notwithstanding anything contained in this Agreement to the contrary, Developer may not request disbursements of funds under this Agreement until the funds are needed for payment of Eligible Predevelopment Costs. The amount of each request shall be limited to the amount needed.

Section 14. Eligible Predevelopment Costs. Developer shall use Predevelopment Loan Proceeds only to pay costs defined as "allowable costs" pursuant to 24 CFR 92.301(a)(2).

Section 15. Conflict of Interest. Developer shall comply with the conflict of interest provisions set forth at 24 CFR 570.611.

Section 16. Lobbying.

(a) No federally appropriated funds have been paid or will be paid, by or on behalf of Developer, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

(b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any

agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Agreement, Developer shall complete and submit HUD Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) Developer will require that the language of Paragraph (d) of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and

(d) Lobbying Certification – Paragraph (d) – This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a pre-requisite for making or entering into this transaction imposed by 31 U.S.C. Section 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000.00), and not more than one hundred thousand dollars (\$100,000.00) for each such failure.

Section 17. Other HOME Program Requirements. Developer shall comply with all other applicable requirements of the HOME Program.

### **ARTICLE III**

#### **ENFORCEMENT**

Section 1. Remedies. Breach of the covenants contained in this Declaration may be enjoined, abated or remedied by any appropriate legal proceeding.

Section 2. Rights of the City. As a party to this Declaration, the City is entitled to the following rights:

a. The City has the right, but not the obligation, to enforce all of the provisions of this Declaration.

b. Any amendment to the Declaration shall require the written consent of the City.

c. This Declaration does not in any way infringe on the right or duties of the City of Riverside to enforce any of the provisions of the City of Riverside Municipal Code including, but not limited to, the abatement of dangerous buildings.

Section 3. Cumulative Remedies. The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

Section 4. Failure to Enforce. The failure to enforce any of the covenants contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.



## ARTICLE IV

### GENERAL PROVISIONS

Section 1. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in all force and effect.

Section 2. Construction. The provisions of this Declaration shall be liberally construed for the purpose of developing and maintaining the Site and restricting the sale of the Affordable Units thereon in accordance with this Declaration and the Agreement. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 3. Amendments. This Declaration may be amended only by the written agreement of the Developer and City.

Section 4. Notices. Any notice permitted or required to be delivered as provided herein from one party to another shall be in writing and may be delivered either personally or by first-class or registered mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States Mail, postage prepaid. Notices shall be sent to:

To Developer:       Habitat for Humanity Riverside, Inc.  
                              Attn: Kathy Michalak, Executive Director  
                              2180 Iowa Ave  
                              Riverside, California 92507

To City:                City of Riverside  
                              Attn: City Manager  
                              3900 Main Street, Third Floor  
                              Riverside, California 92522

Copies to:            City of Riverside  
                              Attn: Community & Economic Development Director  
                              3900 Main Street, Third Floor  
                              Riverside, California 92522

                              City of Riverside  
                              Attn: City Attorney  
                              3900 Main Street, Fifth Floor  
                              Riverside, California 92522

Such addresses may be changed from time to time by notice in writing, which shall be made by certified mail to the other party in accordance with this Section 4.

Section 5. Term of Declaration. It is the intent of the Parties that this Declaration be released on a unit-by-unit basis upon the conveyance of title by Developer of each Affordable Unit to a low-income family. Concurrently with the transfer of title of each Affordable Unit, another declaration of covenants, conditions and restrictions in the form of a declaration applicable to such third party purchaser of the Affordable Unit shall be recorded in the place of this Declaration.

*[Signatures on Next Page]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Declaration as of the date and year set forth below.

**“DEVELOPER”**

HABITAT FOR HUMANITY RIVERSIDE, INC.,  
a California nonprofit public benefit corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**“CITY”**

CITY OF RIVERSIDE, a California municipal  
corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Community & Economic Development  
Director

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

[Attached]

EXHIBIT "A"

APN: 234-101-051, 054 & 057

Fee Simple

That certain real property located in the City of Riverside, County of Riverside, State of California, described as follows:

That portion of Lot 4 in Block 26 of the Village of Arlington, as shown by map recorded in Book 1, Page 62 of Maps, records of San Bernardino County, California, more particularly described as follows:

BEGINNING at a point on the northeasterly line of Myers Street as shown by said map of the Village of Arlington, 150 feet southeasterly from the northwesterly corner of said Lot 4; said point being the northwesterly corner of that certain parcel of land as granted to the City of Riverside, by deed recorded November 10, 1945, in Book 714, Page 100, et seq., of Official Records of Riverside County, California;

THENCE northeasterly along the northwesterly line of said parcel of land granted to the City of Riverside, a distance of 170 feet, more or less, to the southwesterly line of that certain alley, 20 feet in width, as shown by map of Taft Tract, on file in Book 7, Page 15 of Maps, records of Riverside County, California;

THENCE southeasterly along the southwesterly line of said alley, a distance of 210 feet to the southeasterly line of Parcel No. 2 of those certain parcels of land conveyed to Mildred I. Kelley, by Grant Deed recorded July 31, 1941, in Book 512, Page 158 of Official Records of Riverside County, California;

THENCE southwesterly along said southeasterly line, a distance of 170 feet to said northeasterly line of Myers Street as shown by said map of the Village of Arlington;

THENCE northwesterly along said northeasterly line of Myers Street, a distance of 210 feet to the POINT OF BEGINNING;

EXCEPTING THEREFROM that portion of said Lot 4 lying southwesterly of a line that is parallel with and distant 33.00 feet northeasterly, as measured at right angles, from the centerline of Myers Street as shown by Parcel Map 9730, filed in Book 51, Pages 72 and 73 of Parcel Maps, records of said Riverside County;

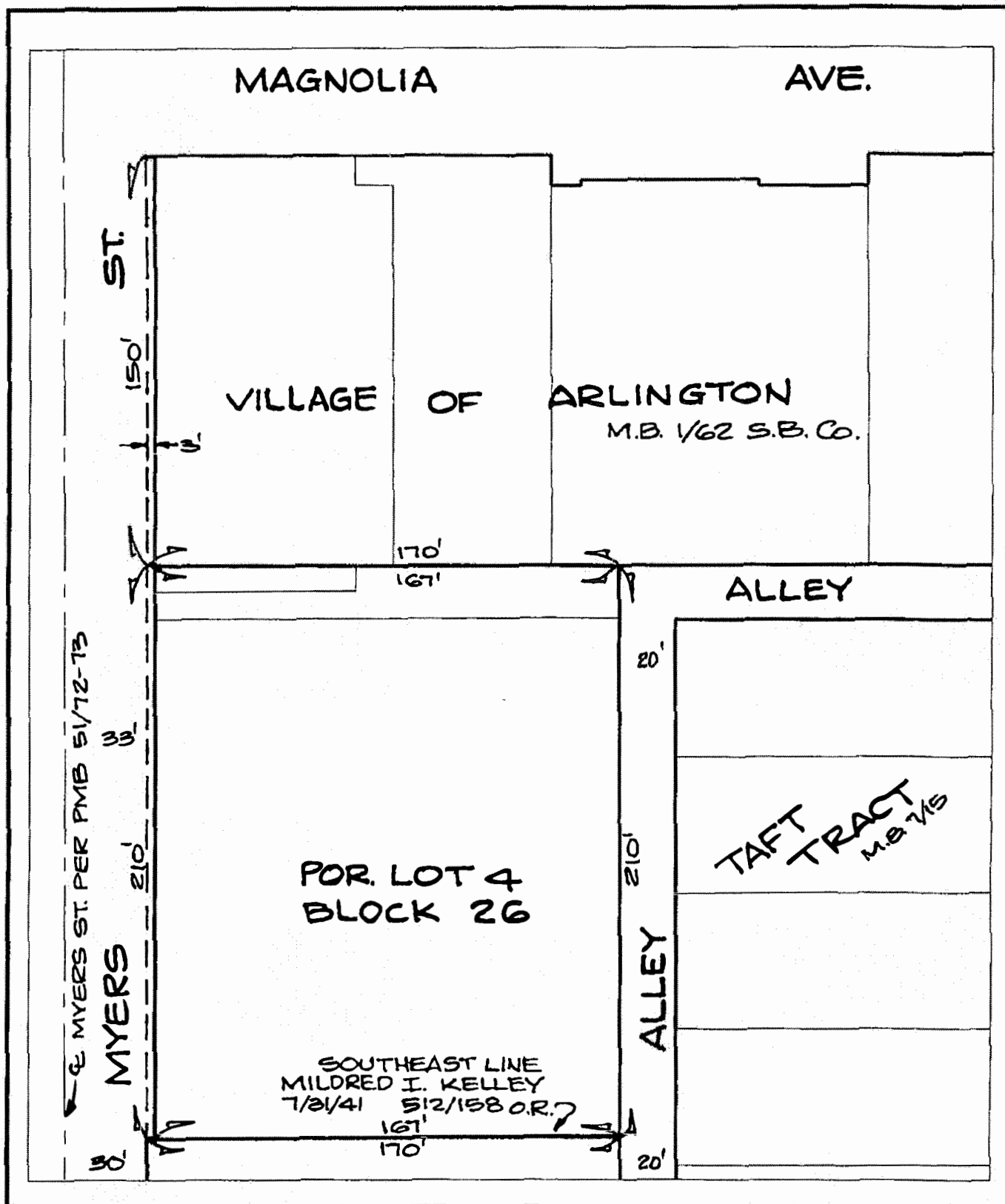
RESERVING THEREFROM permanent easements and rights-of-way for gas line facilities, electric energy distribution facilities, aerial and underground telephone, telegraph and communications facilities as described in Resolution No. 17101 of the City Council of the City of Riverside, a certified copy of said resolution recorded August 24, 1989, as Instrument No. 288815 of Official Records of said Riverside County.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.

  
Curtis C. Stephens, L.S. 7519

5/14/12 Prep.   
Date





◆ **CITY OF RIVERSIDE, CALIFORNIA** ◆

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.

Sheet 1 of 1



Scale: 1" = 50'

Drawn by: sken

Date: 05/11/12

Subject: APN's: 234-101-051, 054 & 057

## **ATTACHMENT NO. 8**

### **ASSIGNMENT OF PLANS, REPORTS AND DATA**

FOR VALUE RECEIVED, HABITAT FOR HUMANITY RIVERSIDE, INC., a California nonprofit public benefit corporation ("Developer"), does hereby assign, pledge, transfer and set over to the CITY OF RIVERSIDE, a California municipal corporation ("City"), all of its rights, title and interest in and to the following (collectively, the "Plans, Reports and Data"): any and all plans, specifications, drawings, studies, reports and related documents concerning the Site, and all amendments, modifications, supplements, general conditions and addenda thereto, including, without limitation, environmental reports, all architectural and engineering plans, any consultant's agreement entered into hereafter ("Consultant's Agreement") by and between Developer and any architect/engineer/consultant engaged to perform services with respect to the Site (collectively, "Consultant") and those certain plans and specifications referred to therein, and all amendments, modifications, supplements, general conditions and addenda thereto (collectively, "Consultant Plans") prepared by Consultant for the account of Developer in connection with the development of certain real property located at 3753 Myers Street within the City of Riverside, California and further identified as Assessor Parcel Nos. (APN) 234-101-051 consisting of 0.80 acres (the "Site"). The Plans, Reports and Data, including, without limitation, the Consultant's Agreement and the Consultant Plans, are hereby assigned as collateral security for performance of certain obligations of Developer to the City evidenced by that certain Predevelopment Loan Agreement dated for identification purposes only as of \_\_\_\_\_, 2015 entered into between the City and Developer (the "Agreement"). All capitalized terms not defined herein shall have the meaning set forth in the Agreement. For purposes hereof, "Environmental Reports" means any "Phase 1" and/or "Phase 2" investigations of the Site and all final reports and test results (not including drafts) provided by Developer's environmental consultant, if any.

Upon the occurrence and during the continuance of a Developer Default under the Agreement, the City shall have the right, but not the obligation, at any time, in its own name or in the name of Developer, or otherwise, to take such action as the City may at any time or from time to time determine to be necessary or desirable in order to cure any default by Developer under the Consultant's Agreement, including, without limitation, the protection of Developer's rights with respect to the Consultant Plans or to protect the rights of Developer thereunder. The City shall not incur any liability if any action taken by the City or on its behalf in good faith, pursuant to the foregoing sentence, shall prove to be, in whole or in part, inadequate or invalid. Developer agrees to have each Consultant engaged to perform services in connection with the Site execute a Consent in the form attached hereto.

Upon the occurrence of a Default by Developer, the City may exercise its rights hereunder and take possession of and title to the Plans, Reports and Data, including, without limitation, all Consultant Plans and the Consultant's Agreement. The City shall notify Developer in writing of its exercise of its rights hereunder in accordance with the notice provisions set forth in the Agreement. Developer shall deliver possession of and title to the Plans, Reports and Data to the City within forty-eight (48) hours of receipt of the City's written notice.

Developer and Consultant, by executing the Consent to this Assignment, agree that the City does not assume any of Developer's obligations or duties concerning the Consultant's Agreement and the Consultant Plans, including, but not limited to, the obligation to pay for the preparation of the Consultant's Agreement and the Consultant Plans, until and unless the City shall exercise its rights hereunder.

Developer hereby represents and warrants to the City that no previous assignment of its interest in the Plans, Reports and Data, including, without limitation, the Consultant's Agreement and the Consultant Plans, has been made. Except for assignment as security for the Predevelopment Loan, Developer agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Plans, Reports and Data, including, without limitation, the Consultant's Agreement and the Consultant Plans, so long as this Assignment is in effect.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, or successors in interest of the Developer and Authority.

IN WITNESS WHEREOF, Developer has caused this Assignment of Plans, Reports and Data to be executed as of \_\_\_\_\_, 201\_\_.

DEVELOPER:

HABITAT FOR HUMANITY RIVERSIDE, INC.,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

t



## CONSENT

The undersigned has prepared the Consultant Plans and hereby consents to the assignment and other conditions set forth in the above Assignment of Plans, Reports and Data. The undersigned also agrees that in the event of a breach by Developer of any of the terms and conditions of the Consultant's Agreement or any other agreement entered into with the undersigned in connection with the Consultant Plans, that so long as Developer's interest in the Plans is assigned to the City, the undersigned will give written notice to the City of such breach. The City shall have 60 days from the receipt of such notice of default to remedy or cure said default; however, nothing herein shall require the City to cure said default, the City shall only have the option to do so.

The undersigned also agrees that in the event of default by Developer under any of the documents or instruments entered into in connection with the Agreement, the undersigned, at the City's request, shall continue performance under the Consultant's Agreement in accordance with the terms hereof, provided that the undersigned shall be reimbursed in accordance with the Consultant's Agreement for all services rendered on the City's behalf.

## "CONSULTANT"

\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## Crosby, Pangy

---

**From:** Crosby, Pangy  
**Sent:** Monday, July 13, 2015 11:21 AM  
**To:** Thomas, Nikki  
**Cc:** Erin Gettis  
**Subject:** FW: Increase Premier Party Rental

**Importance:** High

---

**From:** Gettis, Erin  
**Sent:** Monday, July 13, 2015 10:13 AM  
**To:** Thomas, Nikki  
**Cc:** Crosby, Pangy  
**Subject:** Increase Premier Party Rental

Please increase \$6000 PO for Premier Party Rental another \$3507.14 per signed invoice for GrowRiverside and Neighborfest.

Please let me know if this email will suffice.

Thanks,  
eg

**Erin Gettis, Associate AIA, Principal Planner and City Historic Preservation Officer**

Community Development Department | Historic Preservation, Neighborhoods and Urban Design Division

City of Riverside | 3900 Main Street, 3rd Floor | Riverside, CA 92522

Phone: (951) 826-5463 | Appointment: (951) 826-5371 | Fax: (951) 826-5981

[egettis@riversideca.gov](mailto:egettis@riversideca.gov)

[www.riversideca.gov/neighborhoods](http://www.riversideca.gov/neighborhoods)

[www.riversideca.gov/historic/](http://www.riversideca.gov/historic/)

Please consider the **ENVIRONMENT** before printing this email

**DISPOSITION AND DEVELOPMENT AGREEMENT**  
**(3753 MYERS STREET)**

by and between the

**HOUSING AUTHORITY OF THE CITY OF RIVERSIDE**

and

**HABITAT FOR HUMANITY RIVERSIDE, INC.**

## TABLE OF CONTENTS

	<u>Page</u>
<b>1. DEFINITIONS .....</b>	<b>2</b>
1.1. Defined Terms .....	2
1.2. Singular and Plural Terms .....	7
1.3. Accounting Principles .....	7
1.4. References and Other Terms .....	7
1.5. Attachments Incorporated .....	7
<b>2. REPRESENTATIONS AND TRANSFERS .....</b>	<b>7</b>
2.1. Representations by the Developer .....	7
2.1.1. Organization .....	7
2.1.2. Authority .....	8
2.1.3. Valid Binding Agreements .....	8
2.1.4. Contingent Obligations .....	8
2.1.5. Litigation .....	8
2.1.6. No Conflict .....	8
2.1.7. No Developer Bankruptcy .....	9
2.2. Limitation Upon Change in Ownership, Management and Control of Developer .....	9
2.2.1. Prohibition .....	9
2.2.2. Permitted Transfers by Developer .....	9
2.2.3. Authority Consideration of Requested Transfer .....	9
2.2.4. Successors and Assigns .....	10
<b>3. FINANCING OF THE PROJECT .....</b>	<b>10</b>
3.1. Sources of Financing .....	10
3.2. Construction Bond .....	11
3.3. Sources of Financing .....	11
3.3.1. CalVet Loan Program .....	11
3.3.2. City HOME Loan .....	12
3.3.3. Developer Financing/Corporate Sponsors .....	12
3.3.4. Rights of Termination in the Event of Insufficiency of Funds .....	12
3.4. Obligation to Update Project Budget .....	13
<b>4. DISPOSITION OF SITE .....</b>	<b>13</b>
4.1. Conveyance of Site to Developer .....	13
4.2. Condition of the Site .....	13
4.2.1. Disclosure .....	13
4.2.2. Developer's Investigation of the Site .....	13
4.2.3. Acceptance of Condition of Site .....	14
4.2.4. No Further Warranties As To Site; Release of City and Authority .....	14
4.3. Escrow .....	14
4.3.1. Escrow Instructions .....	14
4.3.2. General Provisions Applicable to Escrow Agent .....	15
4.3.3. Authority of Escrow Agent .....	15
4.3.4. Escrow Costs .....	16
4.3.5. Review of Title .....	16
4.3.6. Title Insurance .....	17
4.3.7. Authority's Conditions Precedent to Closing .....	17
4.3.8. Developer's Conditions to Closing .....	18

## TABLE OF CONTENTS (CONT.)

	<u>Page</u>
4.3.9. Termination of Escrow .....	19
4.3.10. Closing of Escrow .....	20
4.3.11. Closing Procedure .....	20
<b>5. DEVELOPMENT OF THE SITE .....</b>	<b>21</b>
5.1. Scope of Work .....	21
5.2. Permits and Entitlements .....	21
5.3. Defects in Plans.....	21
5.4. Subdivision of Site .....	21
5.5. Demolition and Clearance of the Site .....	22
5.6. Construction of the Project .....	22
5.7. Design .....	22
5.8. Construction Schedule .....	22
5.9. Bodily Injury and Property Damage Insurance; Indemnity .....	23
5.9.1. Insurance .....	23
5.9.2. Developer's Indemnity.....	23
5.10. Other Governmental Authority Permits and Environmental Compliance .....	24
5.11. Rights of Access .....	24
5.12. Federal, State and Local Laws .....	24
5.12.1. Labor Standards .....	24
5.12.2. General .....	24
5.13. Nondiscrimination During Construction and Rehabilitation .....	25
5.14. Taxes and Assessments .....	25
5.15. Liens and Stop Notices .....	25
5.16. Mortgage Deed of Trust, Sale and Lease-Back Financing; Rights of Holders.....	25
5.16.1. No Encumbrances Except Mortgages, Deeds of Trust .....	25
5.16.2. Holder Not Obligated to Construct Improvements .....	26
5.16.3. Notice of Default to Mortgagee or Deed of Trust Holders, Right to Cure .....	26
5.16.4. Failure of Holder to Complete Project.....	26
5.16.5. Right of the Authority to Cure Mortgage or Deed of Trust Default .....	27
5.16.6. Right of the Authority to Satisfy Other Liens on the Site After Title Passes.....	27
5.17. Release of Construction Covenants .....	28
<b>6. COVENANTS AND RESTRICTIONS .....</b>	<b>28</b>
6.1. Use Covenants .....	28
6.2. Number of Affordable Units; Marketing Plan .....	28
6.3. Sales Prices .....	29
6.4. Income of Qualified Buyer of the Affordable Units; Affordable Housing Cost ..	29
6.5. Additional Qualified Buyer Requirements .....	30
6.6. Developer Sale of Affordable Units and Other Covenants.....	30
6.6.1. Formation of HOA; Recordation of HOA CC&Rs.....	30
6.6.2. Disclosures to Homebuyers .....	31
6.6.3. Conditions Precedent to Developer's Sale of the Affordable Units .....	31
6.7. Nondiscrimination Covenants.....	33
6.8. Effect of Violation of the Terms and Provisions of this Agreement After	

## TABLE OF CONTENTS (CONT.)

	<u>Page</u>
Completion of Construction.....	34
<b>7. INDEMNITY AND INSURANCE .....</b>	<b>35</b>
7.1. Developer's Indemnity.....	35
7.2. Insurance .....	35
<b>8. DEFAULTS, REMEDIES AND TERMINATION.....</b>	<b>37</b>
8.1. Defaults - General .....	37
8.2. Legal Actions .....	37
8.2.1. Institution of Legal Actions .....	37
8.2.2. Applicable Law .....	38
8.2.3. Acceptance of Service of Process .....	38
8.3. Rights and Remedies are Cumulative .....	38
8.4. Inaction Not a Waiver of Default.....	38
8.5. Specific Performance .....	38
8.6. Rights of Termination and Damages .....	38
8.6.1. Termination by Developer .....	38
8.6.2. Termination by Authority .....	39
8.7. Reentry and Revesting of Title in the Authority After the Conveyance and Prior to Completion of Construction.....	39
8.8. Limitation on Damages.....	40
<b>9. GENERAL PROVISIONS.....</b>	<b>41</b>
9.1. Notices, Demands and Communications Between the Parties .....	41
9.2. Subordination of Indebtedness.....	41
9.3. Conflicts of Interest.....	42
9.4. Warranty Against Payment of Consideration for Agreement.....	42
9.5. Nonliability of Authority Officials and Employees.....	42
9.6. Approval by Authority and Developer .....	42
9.7. Plans and Data.....	42
9.8. Force Majeure .....	42
9.9. Applicable Law; Interpretation .....	43
9.10. Inspection of Books and Records, Reports .....	43
9.11. Administration .....	43
9.12. Mutual Cooperation .....	43
9.13. Ground Breaking and Grand Openings.....	44
9.14. Independent Contractor.....	44
<b>10. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS.....</b>	<b>44</b>

## **ATTACHMENTS**

ATTACHMENT NO. 1	SITE PLAN
ATTACHMENT NO. 2	SITE LEGAL DESCRIPTION
ATTACHMENT NO. 3	PROJECT DEVELOPMENT
ATTACHMENT NO. 4	SCHEDULE OF PERFORMANCE
ATTACHMENT NO. 5	PROJECT BUDGET
ATTACHMENT NO. 6	GRANT DEED
ATTACHMENT NO. 7	AUTHORITY DECLARATION
ATTACHMENT NO. 8	NOTICE OF AFFORDABILITY RESTRICTIONS
ATTACHMENT NO. 9	RELEASE OF CONSTRUCTION COVENANTS